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Agriculture Committee February 14, 2023

Rough Draft

HALLORAN: Good afternoon, everybody. Welcome to the Agriculture Committee. I'm Senator Steve Halloran, I'm from Hastings, Nebraska, and represent the 33rd Legislative District. I serve as Chair of this committee. The committee will take up the bills in the order posted on the agenda. Our hearing today is your public part of the legislative process. This is your opportunity to express your position on the proposed legislation before us today. The committee members might come and go during the hearing, this is just part of the process, as we have bills to introduce in other committees. I ask that you abide by the following procedures to better facilitate today's proceedings. Please silence or turn off your cell phones. Please move to the reserved chairs when you're ready to testify. These are the first two chairs on either side of the front row. Introducers will make initial statements followed by proponents and opponents and neutral testimony. Closing remarks reserved for the introducing senators only. If you're planning to testify, please pick up a green sign-in sheet that is on the table at the back of the room. Please fill out the green sign-in sheet before you testify. Please print, and it is important to complete the form in its entirety. When it is your turn to testify, give the sign-in sheet to the page or to the committee clerk. This will help us make a more accurate public record. If you do not wish to testify before, before us today, but would like to record your name as being present in the hearing, there are separate white sheet on the table that you can sign for that purpose. This will be part of the official record of the hearing. If you have handouts, please make sure you have 12 copies and give them to the page when you come up to testify, and they will distribute those to the committee. If you do not have enough copies a page will make sufficient copies for you. When you come up to testify, please speak clearly into the microphone. Tell us your name and please spell your first and last name to ensure that we get an accurate record. We will be using the light system today. How many are testifying on LB740? OK. We'll continue with the 5 minutes after that. You will have 5 minutes to make your initial remarks to the committee. When you see the yellow light come on, that means your one minute remains. And the red light indicates your time has ended. Questions from the committee may follow. No displays of support or opposition to a bill, vocal or otherwise, are allowed at the public hearing. Committee members with us today will introduce themselves, starting on my left.

RAYBOULD: Good afternoon, everyone. My name is Jane Raybould, I'm from Legislative District 28, which is in the center-- or the heart of Lincoln.

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HUGHES: Happy Valentine's Day to everybody. I am Jana Hughes, District 24, which is Seward, York, Polk and a little bit of Butler County.

BREWER: Tom Brewer, District 43, which is 11 counties of western Nebraska.

IBACH: Teresa Ibach, District 44, which is eight counties in southwest Nebraska.

HALLORAN: And Senator Ibach is the Vice Chair of this committee. To my far right.

HOLDCROFT: Senator Rick Holdcroft, District 36: west and south Sarpy County.

RIEPE: Merv Riepe, District 12, which is southwest Omaha and the good folks of Ralston.

HANSEN: Ben Hansen, District 16: Washington, Burt, Cuming and parts of Stanton Counties.

HALLORAN: To my right is committee, committee research analyst Rick Leonard. And to my far left is committee clerk Andrew Ojeda. Our pages for the committee today are Landon Sunde from Omaha, he's studying history in political science at the University of Nebraska, and Amelia Stoner from Juniata, Nebraska, also studying political science at UNL. We will begin with LB740. Welcome, Senator Vargas.

VARGAS: Chairman Halloran, members of the Ag Committee, thank you for having me. My name is Tony Vargas, T-o-n-y V-a-r-g-a-s. I have some handouts to give to you. One is an amendment, one is a one-pager. And for the record, I represent District 7 in the communities of downtown and south Omaha. I'm here to introduce LB740, which would standardize and streamline the permitting and inspection processes for food trucks here in Nebraska. I've also passed out AM238, which is a white copy amendment to LB740. With the bit of cleanup language that was needed after the drafting deadline, this is the copy that we've been working with, a lot of the stakeholders specific to the restaurant associations, hospitality, municipalities and cities. This is the one that we are really working off of. Now, Nebraska has been recognized by food writers and world-renowned chefs as the unexpected home to a burgeoning, creative, delicious food scene. Now we have some of the best restaurants and chefs in the region and the country right here, and our food businesses are well-supported and successful. Now, my district, it's particularly is home to some of the state's most

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successful restaurants, breweries, distilleries and food trucks. Several years ago, I was approached by food truck owners about the complications that they face while trying to operate their businesses, which was the impetus for this legislation. Now, these issues arise from our current regulatory framework, which is a patchwork of regulations from counties, municipalities and state governments that can make it more difficult and more costly for food truck owners to navigate and comply with, which is why we brought LB740, which is a step in the-- significant step in the right direction towards finding solutions that maintains health and safety, respects local control, and recognizes the rights of others in the food industry. Now, right now, local municipalities and our state government have placed a patchwork of regulations on food trucks. This makes it difficult and costly for these entrepreneurs to navigate and become profitable. Now, the same food truck owners and operators often operate in multiple cities, so these differences greatly impact their ability to conduct the business and remain profitable. Now, for example, a permit to operate in Lincoln or Bellevue can be hundreds of dollars more expensive than it would be in Omaha. The cost to operate, coupled with having to chase down the different permitting rules and costs easily can become a hurdle for these small business owners. Currently, there's about 620 different versions of regulations that are applicable to a food truck operator in the state of Nebraska. That's 620. My office has been reaching out to food truck owners that we have worked with on this legislation in the past, and it saddens me to say that the overwhelming majority of them have halted their operations due to this exact regulations. That deeply saddens me that small businesses are no longer in operation since the beginning of when we first started having conversations about creating some efficiencies for food truck owners. We should be doing all that we can as legislators to support these small business owners. Now, in today's hearing, we hope to discuss the overarching goals that we want to accomplish with this legislation and to hear more from stakeholders about the reforms to our current regulatory framework that should be adopted in the interest of supporting small businesses, this growing sector of our economy and consumer choice. I do want to thank all the individuals who have been working on this legislation with me for years. As I mentioned, some of that-- you'll hear testifiers or have received letters from some of them. This has been done in collaboration with many different partners, and I just really appreciate them. And what you'll hear is from the small business owners themselves today. At the very high level, what we're pushing forward in this legislation, which is different than past legislation,

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is creating these-- the ability for interlocal agreements to exist between different municipalities or public health departments, while also creating a food truck registry that would provide streamlined services in terms of the information for the regulations that people have to go through when they are trying to navigate creating this business and growing it across the state. So with that, I'm happy to answer your questions. We appreciate you very, very much. And I thank the committee.

HALLORAN: Thank you, Senator Vargas, for your opening statement. Any questions from the committee? Senator Brewer.

BREWER: Thank you, Mr. Chairman. All right, Senator Vargas. Let's see if we can put this into common person terms. So you have one of these trucks and you live in Omaha.

VARGAS: I don't have a truck.

BREWER: No, no, I'm just--

VARGAS: I mean, I would love to have a truck.

BREWER: --trying to, trying to make an example.

VARGAS: That sounds great.

BREWER: So, so we can understand--

VARGAS: A burrito truck would be fantastic.

BREWER: Trying to understand exactly what we're trying to do here. So this truck, in order for you to have a business that happens to just have four wheels and moves, the rules are much different than having a restaurant. And just a little more about why this is such a challenge for them and why we need to fix it.

VARGAS: I think, well, two things. One, you bring up a great question, and I think it will do more justice to answering your question when you hear from different food truck owners across the state, both in urban and suburban and rural Nebraska. Because their stories will sort of lend light on what the problems are. For the purposes of this bill, giving, giving the ability for like a public health department, you know, in particular to create these interlocal agreements is giving the authority and the statutory ability to do this, which will help streamline some of the different ordinances and the things that is

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expected of food truck owners. And if a food truck owner right now is looking to operate in a municipality, they've got to go straight to that municipality. They've got to ask and go through-- doesn't matter how small or large that municipality is, they have to go through and figure out what it takes to operate in that, in that community. And what we're hoping to achieve through this food truck sort of registry is a one-stop shop at the state level where you can find out all the ordinances and everything that you have to navigate as a food truck owner to operate across the state, no matter what city of a first or second class. That will be incredibly helpful and that will help these food truck owners.

VARGAS: That's a very good job explaining it. Thank you.

HALLORAN: Additional questions from the committee? OK, seeing none. Thank you, Senator Vargas.

VARGAS: Appreciate you. I'll be sticking around.

HALLORAN: All right, thank you. OK, we'll look for proponents of LB704. Welcome.

JOHN HLADIK: Good afternoon, Chair Halloran and members of the committee. My name is John Hladik, that's J-o-h-n H-l-a-d-i-k, and I'm testifying on behalf of the Center for Rural Affairs, the Nebraska Grocery Associate-- the Nebraska Grocery Industry Association and the Nebraska Hospitality Association. We have three programs at the center, and lending services is by far our largest. Our staff there provide financing, training and consulting to aspiring business owners that can't get a loan from a bank. They also help interpret the rules and regulations that govern those businesses. After years of working with food trucks, we kept seeing the same issues pop up time and time again. There are mixed messages from regulators, there are unexpected costs for specialty equipment and there are surprise ordinances. And these all lead back to the same root cause, which is regulatory overlap. And Senator Brewer, because I found out I have two extra minutes, I'd like to address your question right off the top. I think the main challenge is we regulate food trucks in the same way as we do restaurants, which is great from a health and safety perspective, because they need to be on the same standard. That's very, very important. But food trucks are mobile, and our food code has not been modernized to reflect that. And so this is about how do we modernize Nebraska state statute for basically the first time since 1997 to account for the fact that this is a growing industry that has its own

special needs. A lot of other states around us and states on other parts of the country have modernized their code for this exact same reason. And so a lot of what we're talking about today is just bringing us back up to speed. The senator mentioned there are more than 620 different combinations of regulations that a food truck operator can be subject to in the state. And so our challenge here is to find one that maintains health and safety, that respects local control, and that recognizes and appreciates the investment and hard work of others in the food industry. I want to jump into the bill itself, starting with Section 5. This is to help establish reciprocity agreements between the state's three autonomous county health departments. This is an issue that's been brought to us several times by different food trucks. A food truck operator needs a lot of permits to operate, but that first and most important, is called the annual permit. Douglas, Hall and Lancaster can issue an annual permit, and the Department of Agriculture covers the other 90 counties. Those four authorities have much different sets of rules and regulations, and they'll charge anywhere from \$122 to \$615 for the right to operate within that territory. But because there's no reciprocity, an operator must start that process all over again any time he or she wants to cross those district lines. Douglas, Hall and Lancaster have higher health and safety standards and a tremendous record, and they're very proud of it. And they've agreed that having a shared high standard would be a big positive for their districts and for the state, and that would certainly help the operators within those counties, because then they'd be able to go in between. I think this would also help those in Greater Nebraska as well, because if you're in one of the other 90 counties and you want to go to a county with high population, a population center and work-- the right to work there, then you're going to know that one standard that you need to meet. Section 6 addresses the next biggest concern that we come across, which is confusion and uncertainty around local ordinances. And so we know each of the state's 529 municipalities have freedom to establish their own requirements, and a lot of them do. These often come with a permit requirement, and those can cost an additional \$500 apiece. So an operator interested in serving an event in another city needs to spend a lot of time finding out what those rules and regulations are. Sometimes that's playing phone tag with a part-time city clerk, sometimes it's online. Either way, it's going to cost you a lot of time and money. And so we think a simple website serving as a one-stop shop can save everybody, including state employees and those city clerks, a lot of time by putting the information there upfront. And certainly the food trucks, there are stories of them going to a

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community, thinking they followed all the rules, and being rejected and just have to turn around. We want to prevent that with a simple registry. And by focusing only on cities of the first and second class, minimizing the information required, including the opt out, if it's a town that just doesn't have an ordinance, and asking the department to issue the requests, this section gets the job done without overburdening our smaller communities. Finally, Section 7 simply asks the department to establish a pre-opening checklist for food truck operators. Right now they use a pre-opening checklist that's meant for brick and mortar restaurants. The department covers 15 inspection zones and they employ a lot of different inspectors. Some of them interpret this document a little bit differently. Lincoln and Omaha have a pre-opening checklist just for food trucks, and it's worked really well. And we'd love to see the state do the same. And with that, I'd be glad to answer any questions.

HALLORAN: Less than a limited time, I appreciate that. Any questions from the committee? Senator Hansen.

HANSEN: Thank you, Chairman. Hi, John.

JOHN HLADIK: Thank you.

HANSEN: So it sounds like you-- we're putting more requirements on food trucks, but also getting rid of some requirements on food trucks. Is that probably accurate?

JOHN HLADIK: Yeah, it's a real puzzle. We're trying to streamline, is what we're trying to do. So to get everybody on the same page, so there's going to be a requirement there and they want to know what it is. And that's what we're shooting for.

HANSEN: That's what it seems like. It seems like we're trying to create this reciprocity like evenly among all the counties to make it easier--

JOHN HLADIK: Exactly.

HANSEN: --but also putting a little higher standards on some things to some extent as well.

JOHN HLADIK: That's right. I think Hall and Douglas and Lancaster, when you hear from them in a minute, they have such a great record. And they don't want to take themselves down to the different standards that the state of Nebraska has. And I think for the state of Nebraska,

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it would be really hard for them to get up to those three counties. And so this is a way about threading that needle the best you can.

HANSEN: Yeah, I think it is-- a good way of putting it, we don't also want to, like, supersede too much local control.

JOHN HLADIK: Yeah.

HANSEN: I mean, to some extent, but also making sure we're doing our due diligence.

JOHN HLADIK: That's right.

HANSEN: Do you know, if you don't, maybe somebody behind you might, if there is a big difference between Douglas, Hall, Lancaster County and the other counties when it comes to like reporting of, you know, complaints or food poisoning? Or do you know if there's a difference between those three counties and all the other counties in the state?

JOHN HLADIK: Well, I've really enjoyed my, my relationship with the public health department so far, and I would not like to jeopardize that. So I will allow them to answer that question.

HANSEN: Gosh darn it. OK. I was trying.

JOHN HLADIK: Thank you very much.

HANSEN: It's only because I know you personally [INAUDIBLE].

JOHN HLADIK: I appreciate that.

HANSEN: All right, thank you.

HALLORAN: Thank you, Senator Hanson. That was a very smooth, smooth answer. Any other questions from the committee? Senator Ibach.

IBACH: Thank you, Mr. Chairman. Are there, are there-- are these similar to what other states do in the Midwest? I'm not talking about coastal cities. But are these similar to what occurs in other states?

JOHN HLADIK: Yeah, What we're seeing, we're not seeing a lot of it in the Midwest. Arizona, Utah and Georgia are the three states that have done just a tremendous job. So not quite the Midwest, but not quite the coast. And what they've done is they've understood the challenges of all of those different regulations. And for some other states, they've, they've done a statewide permit. In talking to the

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stakeholders, that's something we're just not ready for. They've done statewide health standards, but talking to the stakeholders, that's something we're just not ready for. So we see this kind of the best of both worlds. How can we take steps to really move this forward, but also make sure we're modernizing, this way we can welcome this industry, which is truly having a great impact in our communities, as I know you know too.

IBACH: Yeah, thank you. All right, thank you. Thank you, Mr. Chairman.

HALLORAN: Thank you, Senator Ibach. Any further questions from the committee? Oh, yes. I'm sorry, Senator Hughes.

HUGHES: Thank you, Chairman. So with Senator Ibach's question that then led me to-- just listening, it seems like it would be easier just to have a statewide standard. Why are we not ready for that?

JOHN HLADIK: Well, I think it would be very difficult. And I don't want to speak on anybody's behalf, but the-- as I understand it, Lincoln, Lancaster County and Douglas County and Hall, they're, they're nationally recognized for their pristine health standards. And they're extraordinarily proud of that. And it would be difficult, I think, for the Department of Agriculture to have the staff necessary and the resources necessary to bring the whole state up to that.

HUGHES: That answers it.

JOHN HLADIK: But it's, and it's a, it's a perfect question. I really believe, though, if you're in outstate Nebraska, and I am, I'm in Burt County, you know, if I want to serve the College World Series or the State Fair or a Nebraska football game, having one set of standards that I need to prepare for, that's going to be the same in all three, is going to be really big for me. And so I think slowly you do bring the rest of the state along just because there's more interest in serving those more populous counties.

HUGHES: OK, thank you. Appreciate it.

JOHN HLADIK: OK.

HALLORAN: Thank you, Senator Hughes. Any additional questions? So there was a late-- thank you, sir. Appreciate your testimony. There was a late influx of guests here. I'm going to ask for a show of hands again to see if there was more testifiers than initially raised their hands. Who will testify on LB740? OK, this may seem extremely unfair,

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and it probably is. I started off at 5 minutes, but I'm changing it to four. Discretion of the Chair. OK? All right. All right, next proponent. And I might add, as, as you are well aware, that questions from the committee can possibly extend your time anyway. So good afternoon.

TERESA ANDERSON: Good afternoon and happy Valentine's Day. Got to say it. I'm Teresa Anderson, T-e-r-e-s-a, Anderson, A-n-d-e-r-s-o-n. Today, I represent Friends of Public Health, which includes 18 local health departments. I serve as the health director for Central District Health Department, which covers Hall, Hamilton and Merrick Counties. And last December, I testified at the LR328 study session on changes in the Nebraska food code related to food trucks. Now I'm here to testify in support of LB740. I am pleased to report that local health directors have been in communication with the Center for Rural Affairs and the Department of Ag on this bill. We are grateful for their collaboration and willingness to engage with us to ensure the maximum level of food safety while still promoting entrepreneurship. Currently, the three health departments contract with the Department of Ag to permit food establishments, conduct food inspections, provide technical assistance to operators, respond to complaints and investigate reports of foodborne illness in their respective jurisdictions. We assure that the food and beverage is bought and consumed by the public carry the lowest risk of causing illness. In our role, we regularly inspect food trucks and we go one step further, working with potential food truck vendors as they sign the food truck setup to assure they understand applicable food safety regulations. We sincerely want food trucks as well as all food establishments to be successful in serving food to their customers. As you know, the work of food inspectors in Nebraska is guided by the FDA and by the Nebraska Food Codes. Standards universally applied regardless of facility type include having a handwashing sink, hot and cold running water, sinks for washing and rinsing and sanitizing food utensils, and the ability to hold and store food at safe temperatures. This past year, Central District has permitted somewhere between 80 and 90 mobile food units. Some of these operate year round and some of them are seasonal. There's only one permit fee, regardless of where the food truck sets up or how many times it relocates. But there are maybe several inspections to assure that safety codes are being met with no additional cost to the vendor. Each time a food truck moves across a jurisdictional boundary, or even when it relocates within a jurisdiction, food inspectors determine whether an additional inspection is needed. In discussion with our peers at Lincoln,

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Lancaster and Douglas County, as well as with the Department of Ag, we believe-- we believe that food safety standards are being applied evenly across the state. We appreciate that LB740 recognizes the importance of inspections to ensure food safety. LB740 addresses the issue of permit reciprocity among the three local health jurisdictions with Department of Ag contracts. LB740 will allow the three health jurisdictions to accept the permit issued by the other jurisdictions. In discussion with our peers at Lincoln, Lancaster and Douglas County, we are confident that when they issue a permit for a food truck or trailer, it will meet the physical requirements of the food code. The three health departments support the concept of operating permit reciprocity. Food trucks and trailers are somewhat unique in their ability to ensure safe food. It's directly impacted by the weather. When temperatures drop below freezing for days, water pipes in food trucks can freeze. Our inspectors make visits to ensure food trucks have running water essential to operating. Summer heat also causes issue. As the temperature rises, it's hard to maintain food temperatures to prevent bacterial growth. Our goal is to make sure the food you eat will not make you sick. The passage of LB740 ensures that our health departments and the Department of Ag will continue to work collaboratively on standardizing good permits and inspections for food trucks. Thank you for your time today. I'll try to answer any questions.

HALLORAN: Thank you, Ms. Anderson. Four minutes was just perfect. Any questions from the committee? Senator Hansen.

HANSEN: Thank you, Chairman. Now, can I ask you that question? What, like, what's the difference between Douglas, Hall and-- what's the other one-- Lancaster Counties? I know they have higher standards. But have you noticed a lot of difference in complaints or issues of foodborne illness in those three compared to everybody else?

TERESA ANDERSON: I don't know the answer to that, but I do know that all three of us use the FDA and the department regulations from Nebraska for inspections. So the standards are not that different. I think there may be a little bit of variance. For instance, Lincoln-Lancaster, to my understanding, has all food permit-- all food truck vendors to undergo the safety training, the, the food safety training. We don't necessarily do that in Hall County. I know that Omaha has-- or Douglas County has a regulation that requires them to go back to a commissary every night. We don't do that. And to my understanding, Lincoln-Lancaster doesn't. But regardless of those few little differences, we all apply the food code in a standardized way.

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And we're actually standardized by the Department of Ag, where they send someone out to ride with our inspectors so that that standardization and application of the food code is applied consistently.

HANSEN: OK. OK, thanks.

TERESA ANDERSON: Yeah.

HALLORAN: Thank you, Senator Hansen. Any further questions? Seeing none, thank you, Ms. Anderson.

TERESA ANDERSON: Thank you very much.

HALLORAN: Happy Valentine's.

TERESA ANDERSON: Thank you.

HALLORAN: Next proponent to LB740. Good afternoon.

NICOLE FOX: Good afternoon, Chairman Halloran and members of Ag Committee. Nicole Fox, N-i-c-o-l-e F-o-x, government affairs for the Platte Institute. Thank you for the opportunity today to discuss lessening regulatory burdens imposed on food trucks. The Platte Institute has been interested in food truck proposals brought before this committee in both 2019 and 2021, as well as this past fall's interim hearing. Because food trucks are good for the economy, it's important that the state's regulatory framework does not hinder the opportunities that this business model provides. Food trucks provide aspiring entrepreneurs a lower-cost alternative to a more traditional brick and mortar restaurant while offering consumers more choices not just in urban areas but also in rural communities. Many restaurants are currently struggling to find workers. Some are trying to survive by limiting their days or hours of service. But unfortunately, some have been forced to close their doors. Food trucks allow one to be able to own and operate a business, yet not have to deal with the struggle of a workforce shortage. On the other hand, despite the workforce shortage, some food trucks were so profitable over the course of the pandemic that they have opened brick and mortar restaurants. Additionally, noting the popularity of food trucks, some restaurant owners have added a food truck to their business model instead of opening another brick and mortar to reach more customers. Food trucks have been shown to provide complementary business partnerships. In Nebraska, many partner-- many partner with local bars, local craft brewers and farm wineries. These businesses have

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patrons that want dining options, and the partnering with a food truck helps them serve their patrons without having to invest in and establish their own full-sized food service operation. The presence of food trucks may draw new customers to their business. The presence of food trucks increases foot traffic in the areas they serve. Consumers purchasing food from food trucks often check out nearby businesses or may notice that a restaurant in the area-- notice a restaurant in the area and decide to come back and dine there the next time they are in the area. In some parts of the country, food trucks have helped to revitalize dying communities and neighborhoods. In thriving cities and towns, the variety and creative spirit brought about by food trucks leads to the opening of new restaurants. According to the U.S. Chamber of Commerce Foundation 2018 Food Truck Nation Study, starting and maintaining a food truck for one year required an entrepreneur to complete 45 separate mandated procedures over the course of 37 business days and spend over \$28,000 on permits, licenses and legal compliance. These costs are significant and have likely risen since the study was released. A significant amount of time is required to research permitting requirements in different jurisdictions and limits as to when and where food trucks may operate. In some communities, there is time involved to go through a background check. Widely varying health and safety standards can incur significant costs, such as hoods. For new entrepreneurs, these businesses can be extremely overwhelming and possibly deter them from starting a business. Both large and small business owners agree that an element of predictability and certainty is important. In some Nebraska communities, particularly smaller ones, the fees associated with being able to operate are not worth the return on investment. The Platte Institute has been an advocate of creating a path for permitting inspections and operations where food trucks can operate freely across all jurisdictions in Nebraska and not have to navigate the complexity of widely varying local regulations. LB740 is a step in the right direction. And both to your comments, Senator Ibach and Senator Hughes, Platte does support some of the models that have passed in states like Arizona, Georgia and Utah. So while some costs associated with operating a food truck are lower than those of a brick and mortar business, the time and cost associated with navigating the health and safety requirements and inspections often create high barriers to entry that can put the brakes on a new food truck adventure. So we thank the work of the Center for Rural Affairs, Senator Aguilar this summer, as well as Senator Vargas for his many years trying to work on making food truck burdens less so in our state. And with that, I'm happy to entertain any questions.

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HALLORAN: OK. Thank you, Ms. Fox, for your testimony. Any questions from the committee? Senator Hansen.

HANSEN: Thank you, Chairman. We only have two bills today, so I figured I'd have plenty of time for questions so. Can you address cities and their regulatory regulations? Does this address cities? Cit-- doesn't-- don't each cities have their own regulations on food trucks?

NICOLE FOX: So as I understand what this bill does, it will create a registry so that some of the-- because what a lot of food truck operation-- operators are finding is that they're spending a lot of time trying to find out what the rules are. And so the goal is to try and centralize, you know, to create a location like a one-stop shop for when they're doing that research. I don't know if that answers your question. But I mean, the rules vary widely across the state.

HANSEN: So this will create reciprocity with the cities as well? Or it won't?

NICOLE FOX: No.

HANSEN: OK, that's what I [INAUDIBLE].

NICOLE FOX: OK.

HANSEN: Thanks.

HALLORAN: OK, thank you, Senator Hansen. Further questions from the committee? OK, thank you so much. Next proponent of LB740. And don't be bashful. If you're going to testify, move on up to the front seats here in the front row. It would be helpful. Good afternoon.

PATRICK McCLURE: How are you doing today?

HALLORAN: Good, you?

PATRICK McCLURE: Good. Excellent. My name is Patrick McClure, I own Sprockets Famous Freedom Dogs out of Ord, Nebraska. I am in support of this bill for the obvious reasons. But I come here today a little bit more leaning towards the overall outcome of where this bill might want to go in the future. As I said, I live in Ord, Nebraska. I have a commissary unit in Ord. Let's go back a minute. I've been, I've been in business ten years. During COVID, I was forced to travel throughout the state to make a living through COVID. During that time, I learned

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a lot about each city's regulations, fees, who to call, where to go, where not to go. And I learned that all the towns in which charged fees were not the towns to be going to, that I never made my fee but justifiably made it back in profit. So like I said, I live in Ord. Can't even serve in my own town because they want to charge me and limit me, and I have a commissary there. They tell me it's because I don't pay property tax, but I have a commissary. I can go into Kansas, up to six visits on my Nebraska license, but I can't even go into Hall, Lancaster or Douglas County on my Nebraska license, which makes absolutely no sense to me. Anyway, I have to-- I travel the state. I claim-- I state claim to Nebraska's number one wiener. "Wieners never quit" is my motto. But in order to, in order to get around the state, I have to call ahead and avoid the fees, avoid the towns that have the fees because it's just not worth it for me to go there. Yeah, like I said, food trucks and, and fees are a hard deal. I'm a one-man show. I, by the time I drive to where I'm going and drive home, I got to consider all my costs. And sometimes I've had-- gone into towns or called towns that want to charge me \$200, \$300 to go do their event. Well, that puts \$1,000 investment out of my pocket before I'd even gotten to town and back home. So I just got to avoid those places. It's not right to the community that I'm invited to. It's not right to, to those community members. It's telling-- those towns are telling me that I'm not welcome. And those towns are also telling their community that it's OK to go spend their money somewhere else, to go find something else, you know, new, new attractions, new food, new tastes. You know, a town like Ord, people go to Grand Island and they go there to go grocery shopping, but they also go there to go out to eat and do all those other things. Where if things were coming to their town, they might not leave town as often and go spend their money somewhere else. So every, every business, Ace Hardware, the local grocery stores, everybody takes a hit when a food truck isn't allowed to come to town. With that being said, any questions?

HALLORAN: Thank you, Mr. McClure. And your, your evidence that wieners never quit before. Are there questions from the committee? Senator Ibach.

IBACH: Thank you, Mr. Chairman. Thank you for coming today. We met in Wauneta last summer.

PATRICK MCCLURE: Oh right on. Yeah, I remember you and I remember you. Yeah.

IBACH: And we had this same discussion.

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PATRICK McCLURE: Yeah.

IBACH: How many days of the year do you operate?

PATRICK McCLURE: I average 6 to 7 months. During COVID, I had-- or prior to COVID, I closed in December and the weather treated me well. I was able to open back up in February. In March, the restrictions started and I had to find my way around the restrictions. But I made it through the year. Last year, I closed in late November and I was canceling events in May and April because of the weather. So you just never know what you're going to get until it gets here. But I would say 6 to 7 months is all I operate.

IBACH: And would this, would this legislation allow you to operate more days or just in different [INAUDIBLE]?

PATRICK McCLURE: In my scenario, with a hot dog cart, I'm open to the elements. So Mother Nature has a huge bearing on me. But this bill will allow me, like, for instance, I did not pay Hall County fees for three years in a row, even though I started my business there. They kept raising their fees, and the last year I had paid it, which would have been about four years ago, it was \$135. The next year they raised it to \$185. I looked at my records and I had only sold 185 hot dogs in the Hall County that previous year, so it wasn't justifiable for me to pay \$185 for 185 more hot dogs. And, you know, and not to mention that's on like three different visits. So I've got the gas, I've got all the extras, so I didn't go. This last year, I had three events call me requesting my services. So I decided to take the gamble on the Hall County fees. It paid off for me this last year. So this, this coming year I've maintained at least two, if not three of those events. So I'm going to do it all over again. But that still, I had to pay an extra \$40 on my commissary permit just to come into Lincoln and cater an event that was here in Lincoln this last fall. I assume that I will continue that extra \$40 on my commissary permit so that I can perhaps do that same event again. But did I answer your question?

IBACH: Yes.

PATRICK McCLURE: All right.

IBACH: Thank you very much. Thank you, Mr. Chairman.

HALLORAN: Thank you, Senator Ibach. Any further questions? Seeing none, thank you, Mr. McClure. Appreciate it.

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PATRICK McCLURE: You bet. You all have a great day. Thank you.

HALLORAN: You too. Next proponent to LB740. Welcome and good afternoon.

KEVIN WYATT: Good afternoon, members of the committee, Senator Halloran. I'm a food truck owner in Omaha, Nebraska and I-- I'm sorry, Kevin Wyatt, K-e-v-i-n W-y-a-t-t. I want to thank Senator Vargas for his continued push to help our folks out. I don't have prepared remarks, but I'd like to maybe try to redefine a little bit about what we run into. So this bill will create, as best I can tell, a one-stop shop was what they keep saying. So a place for us to all go and look and see what "Mr. Wieners Never Quit" is, is having to find on his own. But we would be able to find out whether or not we would want to go to a specific place based on what it would cost us to be there. And it would unify the food inspection system amongst the state, which would be helpful. We get inspected on a fairly regular basis. When we have relatively large events where there's multiple food trucks there, a food inspector will show up and inspect our trucks. So it's not like we just get it inspected once a year by Douglas County, which we do, but we also get inspected if we go to Sarpy County or another place, if it's a large event. Frequently, if it's just a one-off where we're at a specific business, that doesn't happen. What this doesn't do is it doesn't give us the ability that electricians or plumbers or carpenters have, which is going to another part of the state and not having to pay to do their job there. And this does those-- I'm not sure why localities feel like they need to charge the amount that they need to charge. I think they, they think we make a lot more money than we do. We don't. We're operating like a restaurant is. If we got 10 percent left over, we're thrilled. If you're going to charge me a hundred bucks to be there and I'm going to make less than a thousand, what's the point? And that seems to be the, the next phase of what I would love to see you folks address. This is a start. This is a great start. This gives us some place to go. But as it is now, I don't come to Lincoln because it's too expensive for me to come to Lincoln. And unless I have four or five events in Lincoln, I can't go. So it stifles competition. It stifles bringing unique products that all of us think we prepare to a different place because sometimes it's just too expensive to go to that place. That's all I got. I appreciate your time. If you have any questions.

HALLORAN: Thank you, Mr. White. Questions from the committee? Senator Hansen.

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HANSEN: Thank you.

KEVIN WYATT: You're prolific today.

HANSEN: I know. I'm curious about food trucks, and I'm hungry. So, out of curiosity's sake, do you-- do food trucks pay like restaurant taxes at all?

KEVIN WYATT: Yes, we do.

HANSEN: OK.

KEVIN WYATT: In Omaha, we pay, we pay the restaurant tax. That's been going for three years, four years? We were added on.

HANSEN: I was just curious about the question that you asked, the justification of why they charge you a fee. And maybe it's because the restaurants pay property taxes, or is it something else that maybe they're paying and food trucks aren't to make up for the difference? I don't-- I'm trying to figure it out. [INAUDIBLE].

KEVIN WYATT: And that may be the case. When we first started the Omaha Food Truck Association, which was with these gentlemen that are sitting over in the front row-- they'll be able to see you in a minute-- One of the things that was a huge issue for brick and mortar restaurant-- brick and mortar restaurants is that food trucks were going to be in competition for their dollars and that we didn't have the same level of overhead that they did. We've contended from day one that a food truck meal is different than a restaurant meal. Today is Valentine's Day. Let's say you're going to take your significant other out to dinner and you say, hey, let's go out to dinner. They're going to have one thing in their mind. If you show up at a food truck when they think they're going to a restaurant, that is not the same eating experience. [LAUGHTER] Additionally, if I need quick food, but I don't want to do fast food, I can get that from a food truck and I can't get that from going and sitting down in a brick and mortar. So this-- they are two different eating events, and that was something that we labored to try to make clear to the industry that we were not there in competition for the, for the last dollar that a brick and mortar was going to get. We were going to expand the business.

HANSEN: OK. Thank you. And thank you for shooting down my plans tonight. [LAUGHTER]

KEVIN WYATT: Yeah, she's going to appreciate coming to a food truck tonight on a cold, wet day. She'll be right all over it. Anybody else?

HALLORAN: All right, thank you, Mr. Wyatt. You think he was kidding, shooting down his plans. Thank you, Mr. Wyatt. Next proponent, LB740. There are available seats in the front row if you're going to testify, would expedite the time a little bit. Good afternoon and welcome.

BILL LAMSON: Good afternoon. Thank you for all being here today. My name is Bill Lamson, L-a-m-s-o-n, and I'm the owner of a food truck-- food trailer, technically, called Hudson's Mini Donut Company, a food trailer which I started just a little less than a year ago. I'm also a former attorney. I spent 20 years in private practice before I made the most unexpected of career choices to leave that practice behind. Thank you very much. So now I am actually a recovering attorney. But I mention that because, as you might imagine, as an attorney, I was very accustomed to reading all types of rules and regulations and statutes, trying to find answers to legal questions and regulatory matters for myself and my clients. And those can obviously be, as you all know, very complicated. It's time-consuming and frustrating, to say the least. So it's with that background that I wanted to come here and tell you today, not just to echo what's already been said, but to let you know as someone who had to interpret statutes daily for almost 20 years, that navigating the rules and regulations governing the operation of mobile food vendors like myself was quite a challenge. And I'm not just saying that for the benefit of today's hearing, I spent hours and days on the phone, on websites, researching what I needed to do to get a permit, talked with multiple people over and over again to make sure I was going through the process correctly. And quite frankly, I can't imagine that without my background, you know, I can't imagine what it's like for others to have to do that who aren't as familiar with that kind of process. And when I first started, I had every intention of operating outside of the Omaha area, Lancaster County, Sarpy County, etcetera. So when I started kind of looking into everything and trying to figure out what it was going to take to do that, I quickly basically made the decision that I'm not going to do that. I decided not to pursue licenses and permits, like others have said, in any other county besides Douglas County. Because basically I'd have to go through that permitting process all over again. And maybe it was the same, maybe it was different. And good luck finding the information as been, as has been alluded to today, very quickly or easily. Since I've started, I basically limit myself to the city of Omaha. I very rarely even venture out into Douglas County for kind of a reason that's also been alluded to with regard to smaller cities and

municipalities that don't necessarily have their own rules, but they want me to fill out a form and give them a check. And that's pretty much it, if we're being honest. They put that form that I gave them in a file cabinet, and maybe someone knows where it is if they ever have to look. But more importantly, I just paid them a fee and that's kind of all they want. So I don't. I had every intention of coming down to Lincoln and the surrounding areas. In fact, I routinely get calls to venture outside of Douglas County. And unfortunately, I tell them, I'm sorry, I can't do that. And I feel that that not only affects my business, but it affects those communities because outside of maybe the Lincoln and Omaha metro areas, a lot of the smaller communities, they don't have really many food trucks, if any. They don't necessarily have a lot of restaurants. And the events that we're going to, there are food options there anyway. As the previous gentleman alluded to, we're not competing with restaurants. We're bringing food options to events that otherwise would not have them. Soccer tournaments, graduation parties, community festivals, etcetera, etcetera, etcetera. I've never felt that I've been in competition with a restaurant. Usually you can't even see a restaurant from my food trailer because of where we're at. So by making it harder for us to go outside of our given area, you know, I think in a way we're depriving, not to sound too conceited, but we're depriving those community of a lot of options, a lot of food and entertainment options that they might otherwise want to have. Because as I said, I've, I've turned those down already. And I see the red lights off, so thank you very much, though. And to Senator Vargas also. Questions?

HALLORAN: Thank you, Mr. Lanson. Questions? Senator Hughes.

HUGHES: So I'm just trying to wrap my brain around how many permits somebody has to get. You have a permit from Douglas County.

BILL LAMSON: Correct.

HUGHES: So I see Bennington is in your county. If you go to Bennington, do you have to get a permit from Bennington?

BILL LAMSON: I don't know, to be honest.

HUGHES: That's what you want-- that's what you're saying.

BILL LAMSON: It would be nice to know.

HUGHES: You want a website I can go to. I'm going to go to Bennington, this is what I need.

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BILL LAMSON: I've been asked to go to Bennington, I tell them no.

HUGHES: OK. So, so that's the probl-- like you buy a permit for one area, and then even within that area, you have to get permits from the little towns in that area?

BILL LAMSON: Sometimes. Sometimes not. Sometimes they don't even know. I--

HUGHES: This is super confusing. OK.

BILL LAMSON: You're preaching to the choir.

HUGHES: I get it. I get what you're saying. But this bill doesn't do anything to fix that, except that you can go to one place to see. I don't have-- now you don't have to call Bennington's chamber or whatever and try to figure out.

BILL LAMSON: Which oftentimes they don't even know, the smaller communities.

HUGHES: Sure. I'm from a smaller community, so I want you to come to Seward, let's say, Seward County. And you're like, yeah, is that-- are you going to go to Utica or are you going to go to Milford? Each one might have to have, have different things and want another fee.

BILL LAMSON: It's certainly possible. I mean, there's-- yeah, you have to get licensed to operate in a county or the state.

HUGHES: OK.

BILL LAMSON: And then the cities, they just kind of want to issue a one-day permit thing.

HUGHES: So the city, the city, the little individual, those are like a one-- OK. Those are-- that's another thing. So this Douglas County works for one year.

BILL LAMSON: Right.

HUGHES: And that's who will do your inspection?

BILL LAMSON: Correct.

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HUGHES: So there's four entities that do inspections that way. That's like the umbrella. And then within that are little-- OK, I'm just, I think I'm getting it.

BILL LAMSON: Right. And you really, at least in my limited experience, because I have gone to some smaller cities where I literally fill out my name and address, the name of my company and give them a check. And I'm good to go. And maybe that makes me good in that community for a longer period of time than one day. Honestly, I'm not really sure and, and it probably does. But still, to have to do that repeatedly is a burden. And to find out whether or not I even have to is a burden.

HUGHES: So then do you carry two-- do you carry the Nebraska Department of Ag license and the Douglas County license?

BILL LAMSON: Yes.

HUGHES: So, OK.

BILL LAMSON: And city of Omaha permit.

HUGHES: Oh, sure, you would have to have that too. And is that good for a year or is that--

BILL LAMSON: Yes, I believe so. Don't quote me on that.

RICK LEONARD: Yes.

BILL LAMSON: Thank you.

HUGHES: This is super confusing. Fun. OK. Sorry, thank you.

BILL LAMSON: Yep.

HALLORAN: Thank you, Senator Hughes. Any further questions? Thank you.

BILL LAMSON: Thank you. Thank you, Senator Vargas.

HALLORAN: Next proponent, LB740.

KEVIN WYATT: I know I had my chart [INAUDIBLE].

HALLORAN: Sorry.

KEVIN WYATT: Try to explain the difference between a permit and [INAUDIBLE].

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HALLORAN: Maybe after the hearing [INAUDIBLE]. Good afternoon.
Welcome.

CRAIG RYON: Good afternoon, committee. Excuse me. My name is Craig Ryon, C-r-a-i-g R-y-o-n, and I own Sauce Bosses BBQ food truck in Omaha. I believe this bill is going in the right direction for updating Nebraska food truck regulations. Excuse my going to completely read this, because this is not my thing. Before I opened Sauce Bosses, though, I was a realtor in the state of Nebraska. When I became a realtor, my license was valid in the entire state. And I believe that this requirement should be same with food truck operators who are up-to-date on health inspections and permit requirements. I believe, like a lot of the other people said, if we're good in one area, we should be good all the way across, be able to work everywhere. The confusing difference-- the confusing and different requirements between counties and cities has prevented me from visiting other locations with my truck. For the longest time, I never got into Lancaster County, because I thought the entire county had the same regulations as Lincoln. But in talking with another food truck owner, I found out that Lincoln has regulations within a three-mile radius, I guess, of the city that's different than the rest of the county. I finally took the time to call Lancaster Health Department, and this was confirmed. Despite like other people getting calls from people in Lincoln that I was turning down or the surrounding cities in the county that I was turning down, that I would have been able to go to or whatever. Also just been hesitant getting Lancaster permits sides, again, talking about the financial. That's one of the larger fees much like the Douglas County one. The time to come down to file paperwork, the time I have an inspection done, bring my trailer down here, stuff like that. If this bill was passed, I'd be able to travel to other areas, widen my customer base. I just encourage you all to support the changes in this bill.

HALLORAN: OK. Thank you, Mr. Ryon.

CRAIG RYON: Any questions?

HALLORAN: Questions from the committee. Seeing none, did you bring samples of your sauces?

CRAIG RYON: No, I'm sorry.

HALLORAN: Next proponent, please. LB740. Welcome and good afternoon.

SETH COATES: Thank you, sir. Good afternoon. Thank you for having us today. My name is Seth Coates, S-e-t-h C-o-a-t-e-s, I'm here today to speak in support of LB740. We own and operate a family-owned business in our hometown of Fremont, Nebraska. The name of our business is Scouty's Shave Ice, and we are, by definition, a mobile vending unit. And as such, we are directly affected by the outcome of LB740. We primarily serve the areas of Dodge, Saunders, Washington and Douglas counties. We operate a licensed commissary, as well as two mobile vending units. We've obtained permits with the Department of Agriculture, Douglas County in multiple, multiple cities in Nebraska. While we do not have the years of mobile vending experience, perhaps as some here today, we do find commonality in the ongoing struggle to navigate requirements to operate legally within the state of Nebraska. We have countless examples, but I'll give you just one. This past summer, our services were requested in the rural community of McCook, Nebraska. The University of Nebraska equestrian program contacted us. We made every effort to contact the city clerk in McCook to discuss specifics regarding their classification of mobile vending units and operational requirements. However, we were unable to get answers and ultimately were forced to turn away participation in their event. Had the mobile food unit ordinance registry been in place, it would have, in theory, assisted us in rapidly making a conclusive decision regarding our attendance and participation in their event. This is a scenario that happens over and over again for us in all kinds of cities. We're contacted, but the information just isn't available, there's no one to talk to, or it's buried in ordinances that are just aren't available to us. It's time for the state of Nebraska to forego its marginalization of food truck owners and acknowledge the legitimacy of mobile food vending and its positive impact on our communities. This is not a flash in the pan fad that some once thought it would be. It's grown to an estimated estimated \$1.5 billion industry in the U.S. By supporting LB740, this committee can breathe life into an industry right here in Nebraska that's not only filled with eager entrepreneurs, but overwhelmingly represents a vast diversity of ethnicity, culture and races. I have a background as well in the Judicial Branch, and if I were to be honest, one of my business advantages would be if LB740 never leaves this committee. The reciprocity of permits, mobile food unit ordinance registry and the use of consistent opening checklists only serve to help those who operate mobile vending units. The current processes surrounding the licensing and operations are confusing, redundant and expensive. By keeping the permitting as financially unattainable as possible for those who wish to operate in multiple counties in municipal code

obscured and intensely laborious to find, it discourages your constituents and minimizes my competition. However, I support LB740 because I believe it promotes fair business practices. I believe there's more than enough room in this industry for others, and I believe licensing process should be transparent. And while I do not believe LB740 solves all of our problems, I do believe it collectively moves our industry and community forward. In closing, when I was working with our councilmen to lobby for change in our own city, I thanked one of them for their assistance. And he said, it was the least I can do. I've thought a great deal about what he said. It was the least I can do. You should-- you see, when we do the least we can do, it only really means that we've done what we should do. Moving LB740 out of committee and onto the floor as a step forward in your support to a growing industry of current businesses owners and aspiring entrepreneurs. And while it truly is the least you can do, it respectfully is what we should do. Thank you.

HALLORAN: Thank you, Mr. Coates. Questions from the committee? Senator Riepe.

RIEPE: Thank you, Chairman. For some time I've heard that permitting in Douglas County is significantly more complicated and more difficult, takes more time than Sarpy County. And I don't know if that's your experience.

SETH COATES: You know, our permitting-- actually, Douglas County, to be honest with you, was a fairly straightforward process for us. While it certainly requires a great deal of phone calls and, and coordination with multiple agencies, you know, we've had good experiences with Douglas County. We have not come into Lancaster County, so, you know, I'm not, I'm not familiar with their process here. But I'll tell you, it's quite a bit more expensive. And so that's one of the reasons why we haven't come here. But one of the, one of the biggest arguments is that food trucks cut into the brick and mortars. And that's probably one of the biggest arguments that we run into when we work with, we work with our own city council in trying to change ordinances, was that the brick and mortars were concerned about the unfair competition. But that has been disproven. It's-- there's been research done and that is unequivocally been disproven through statistical data so.

HALLORAN: OK. Senator Riepe.

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RIEPE: One more. This question has always been a curiosity question for me, is how do you give authorization as to where you put your vehicle? I mean, because they're usually two or three spots.

SETH COATES: Right.

RIEPE: And sometimes they are parked right in front of a restaurant.

SETH COATES: Yeah. So are you asking city-- city by city? It's different everywhere.

RIEPE: You could of just pull in a--

SETH COATES: Sure.

RIEPE: --[INAUDIBLE] three meters?

SETH COATES: Sure, sure. Well, it really depends on the city. I'll use our city in Fremont as an example. Previously, all of the vending had to be done on private property. We had to submit site plans and letters from property owner and a myriad of paperwork to be able to set up and operate in one location. And that was, if we moved, if we ever moved, we had to repeat that process over and over. Most, most cities, if they have any sort of ordinance at all, there is restrictions generally as far as how close you can set up to an existing, like a brick and mortar restaurant. Almost all of them, if they have any ordinances at all, they have restrictions on that.

HALLORAN: OK. Thank you, Senator Riepe. Senator Hansen. I'll come back to you again, Senator.

RIEPE: OK. Fair enough.

HANSEN: I should be quick. Is there a difference between establishments that serve hot versus cold food? Because I'm thinking, like, a lot of towns have ice cream trucks. Would this bill pertain to those as well? Or are we talking about more--

SETH COATES: Are you talking about a mobile food vending or--

HANSEN: Yeah.

SETH COATES: Yeah, we all fall under, as far as-- we all fall under the same, the same restrictions and same permitting processes. Whether it's, whether it's snow cones or whether we're serving hot dogs,

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generally speaking, we all fall under the same-- I get the same permits that they do. Now, the requirements of the actual vehicle may be different. They have to have temperature holding, there's different things that they have to, to show to the-- to-- it would be like the health department.

HANSEN: OK. I was just making sure we weren't putting, like, too much burdensome rules on all of a sudden ice cream trucks when they didn't have them before. Because I know most towns have one so.

SETH COATES: Right, they-- most of them have run out. So yeah.

HANSEN: All right. Thank you.

HALLORAN: Thank you, Senator Hansen. Senator Riepe.

RIEPE: Thank you, Chairman. This may be crossing the line a little bit, but I know in Phoenix, Arizona, for example, they have trucks that come around with games on for birthday parties and they park in the driveway. Would this apply to a nonfood type of truck situation?

SETH COATES: Well, Senator--

RIEPE: You're [INAUDIBLE].

SETH COATES: I can only-- yeah, right. I can only tell you in my direct experience with our own city, we had discussions surrounding that. And they have no restrictions with regard to what we call gaming trailers. And we have discussed that with other municipalities as well. And those do not seem to be real regulated, to be honest with you. So some fall under a peddlers ordinance, you know, that, that's kind of where they stick the food trucks and they try to stick food trucks. If they don't have an ordinance, they stick us under the peddlers ordinance, which doesn't really fit either. So as state level, we kind of get down to that state level, and we certainly look forward to the day when we can have discussions about state-level issues because, really, LB740 really deals with at the-- at the state level instead of the city level, LB740 really focuses on what we can do at a state level. But at a city level, everybody kind of operates differently, so yeah. But there's no restrictions as far as the state level that I know is gaming trailers and such so.

RIEPE: I'm sure that food safety is huge on the concern list.

SETH COATES: Absolutely. Yes, sir.

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RIEPE: Thank you. Thank you very much. Thank you, Chairman.

HALLORAN: Thank you, Senator Riepe. Any further questions? Seeing none, thank you, sir. Appreciate it.

SETH COATES: Thank you.

HALLORAN: Next proponent to LB740. Good afternoon.

NICK MAESTAS: Good afternoon. Nick Maestas, N-i-c-k M-a-e-s-t-a-s, own and operate the Muchachos food truck and restaurant in Lincoln and opening one in Omaha as well. I've been doing this for a little over six years now. And you know, in moving to Omaha for the first time and opening a spot there, I sometimes feel like I have the exact same jitters and unknown opening in a new community, in a new county that I did day one opening in Lancaster County. It's been a struggle at times. I was a lot better looking before I was a food truck owner, significantly better looking. And now I'm gray and old and it's been stressful trying to learn, trying to go into different communities and find the baseline of what they expect as opposed to what we're used to. And we have a great relationship with Director Lopez in Lancaster County, and in working with the City Council, Senator Raybould, and working with food truck pilot programs in Lincoln and understanding where restaurant associations are coming from and building those relationships. I feel it's super helpful to have everything on the board where we can go, where we have one place to go for everything instead of taking that time. And, you know, the money is a big part of it too, when you're paying for different permits. But the amount of time that you dig into finding how much we need to pay here, where we can park, where we can't park, sometimes it's easier to ask for forgiveness than permission. And so you show up and you know it's not the right thing to do, but it's oftentimes easier. And you want to do things by the book, you want to do things right. But oftentimes, the juice isn't worth the squeeze. So with that being said, I'm definitely a proponent of this and definitely looking forward to seeing where we can go with it. So appreciate your time.

HALLORAN: All right. Thank you. Mr. Maestas. Questions from the committee? It is oftentimes easier to beg for-- forgiveness and ask permission, you're absolutely right.

NICK MAESTAS: Yes, sir.

HALLORAN: But thanks for what you do.

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NICK MAESTAS: Thank you.

HALLORAN: Next proponent of LB740. Good afternoon and welcome.

BRANDEN CICIULLA: Thank you. My name is Branden Ciciulla, I'm the owner of Hawks Pizza Truck. We opened in 2014.

HALLORAN: Could you spell your name for us?

BRANDEN CICIULLA: Oh, sorry. Branden, B-r-a-n-d-e-n, Ciciulla, C-i-c-i-u-l-l-a. We've been open since 2014. It's always, every year is a little bit of a learning curve as we try and expand and visit more districts and more cities. As a small business owner, every minute counts, every dollar counts. So we try and expand, we try and grow. And sometimes as we grow, we hit hurdles. And it makes it very difficult. As you've heard many times before, learning what and where you can park and why you can or cannot and whatever is a huge hurdle that does keep us from growing and visiting new places and offering our food to new people. So it's something that we're fortunate enough to do something we love, but it is very, very difficult sometimes. And it's been asked several times before, I sat down and did the work. And we operate out of Omaha, and for every permit to operate within an hour-and-a-half distance was 13 permits and cost just under \$2,000. So each time we go somewhere, it takes time to fill out the paperwork, wait for it to get back, pay the permit. So as we grow, it just would be nice to have one place, one permit and get to that point as our end goal.

HALLORAN: OK. Thank you, Branden. Any questions from the committee? Seeing none, I appreciate your testimony.

BRANDEN CICIULLA: Thank you

HALLORAN: Next proponent of LB740.

TOBY ANTONSON: Happy Valentine's Day, everybody.

HALLORAN: Good afternoon.

TOBY ANTONSON: My name is Toby Antonson, T-o-b-y A-n-t-o-n-s-o-n, I operate and own the Pork's Done BBQ food truck here in Lincoln. I've been in business for just over a year, and it's been an interesting ride so far. I'm in favor of this bill just like everybody else is, because it seems to be that you spend a lot of time fishing, but you don't catch a lot when it comes to finding things and the permits and

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the fees and everything that comes along with where you're going. My first experience with a food truck, I'm from western Nebraska. I'm from Dundee County. Our first-- our first food truck experience out there was a Pizza Hut from Saint Francis, Kansas, borrowed an RV and brought 50 pizzas to the local bar in Benkelman, Nebraska, and sold 50 pizzas in 12 minutes. And the bar owner was happy because everybody sat, drank, had a good time, and they sold 50 pizzas. So every Wednesday in my high school career, it was pizza night. The Pizza Hut would drive up and they would be in an RV and do that. Yeah, they probably didn't get inspected and, yeah, there probably was a few deals. You turn that tide from being in a small town where there are very few opportunities when it comes to restaurants. My wife is from a very, very small town that they don't have any restaurants in their town. And yeah, once in a while I'll go back and I'll do a cook or I'll do a fundraising cook for them as well. And to go through all the permits and the county fees and everything else, a few guys have already said, you know, to, to walk into some of these communities, they just want you to check-- they want, they want you to write a check. I mean, I'm from Lincoln. I go through one of the hardest, you know, Lincoln, Omaha, Grand Island, one of the hardest inspection processes when it comes to this. I'm also very fortunate enough that I get to go out and feed the troops every Wednesday here out at the base. I go through a federal government inspection as well. Not everybody has to go through that, but I'm fortunate enough that I'm able to do that. And I think having this, what I would call, educated plan to where everyone that wants to get into this business can have a place to go, we've all tripped and stumbled and made our way and done what we are and we're successful, we're still in business doing what we're doing. The great part is, is those folks coming after us, it will make this process a little bit easier. I'm sure when the first restaurant opened, there's been stumbles along the way and now things are a little bit better for the restaurants. Well, we're opening up and coming along as, as well, and we're going to try and make that better. So that's kind of why I say, hey, this is a, this is a great start plan and let's hope it continues to go to where, like I said, we can all make one happy family, I guess, is what it is so.

HALLORAN: OK, I thank you for your testimony. Are there any questions from-- Senator Riepe.

RIEPE: Thank you, Chairman. I have a question. Do you do any consulting or mentoring to individuals that are interested in entering the business and either you say you don't have the capital or you don't have the experience or whatever?

TOBY ANTONSON: Absolutely. I actually met with a gentleman-- or actually two gentlemen in December that are starting the same process. And I actually had met with someone when I tried to start this process. So we are a very close-knit group when it comes to being able to help, but we're all here to help. It's-- I'm in barbecue and there's a thing that in our barbecue world I compete nationally. I'm a competitive barbecuer. And we call it barbecue family, we're all family. Whether we compete every day, whatever the deal is, we're still family. We're going to help each other out all the time, no matter what we need. I just did a competition in Omaha a couple of weeks ago and I forgot maple syrup. I needed maple syrup. I mean, you're-- and five guys came up, hey, you need something? Here it is. So it's the same concept when it comes to that, being able to help your neighbor, help thy neighbor, whatever. And if somebody's got questions or, hey, where did you stumble or, hey, where did you find this? Or hey, how, how does this work? Absolutely, I'm, I'm an open book.

RIEPE: Thank you.

TOBY ANTONSON: Yeah.

HALLORAN: Thank you, Senator Riepe. Any further questions? OK, seeing none, very nice.

TOBY ANTONSON: Have a great day. Thanks.

HALLORAN: Next proponent of LB740. Good afternoon and welcome.

RAUL ARCOS HAWKINS: Good afternoon, Senator and committee members. I am here to show some love to the food trucks on this Valentine's Day. My name is Raul Arcos Hawkins, spelled R-a-u-l, last name A-r-c-o-s, second last name H-a-w-k-i-n-s. They're passing though my written statement, but I'm going to kind of differ to answer some of the questions that have been going on throughout the day. So I am from Grand Island. Today, I'm testifying in favor of LB740. I've been working with entrepreneurs for almost a decade to helping them start businesses ranging from restaurants to in-home childcare centers. And over the last decade, we've seen an expansion of the food trucks. Unfortunately, that expansion has grown, but none of the regulations or even standard regulations that we need have come about. In your packet, you will find a floor plan review checklist from the Department of Agriculture. And if you look at it, you will find that some-- this is one of the very-- the checklists that I hand out to

clients who would like to start a food truck. Unfortunately, if you look at it, some of these-- some of the stuff that is on this checklist does not fit what a food truck should be set up as. And what we're asking is to have this pre-opening checklist that will help food trucks and food truck owners start one. I think it will be helpful, just as we're doing it with the restaurants, to have this pre-opening checklist that will allow a faster streamline of how this food truck should be set up, which will also help with the food safety regulations when you're looking at how to keep things hot and cold. It will ensure that the proper equipment is also being put in. And then one of the other-- one of the other things that we are looking at is also-- is ensuring that we do have-- and I know it's not something that we're going to see maybe in the next couple of years, but we would like to see if a permit or a license across the state, just like all the other licensed professions, where they're able to practice all over, all throughout the state without having to have all these different permits in all these different districts. One of the examples is, if you would like to have some awesome Mexican food, is Tacos La Hermanos who is opening a location here in Lincoln on North 70th Street. They wanted to go to Lexington because they were invited by a business, but unfor-- and they had called to make sure that their food that the permit that they had, the mobile food permit, would also cover them in Dawson County. They were told, yes. When they got there, it was a different story, and they were asked to leave an hour into service. And they had to tell their clients, sorry, you can't have our food. In one of the pages that you will find towards the back, you will find what I have to dig through in order to find out what the regulations and what some of the fees were for Lexington and Dawson County. They do do an awesome job at giving you where else you should look at in order to find any other permits or additional regulations that you may have to follow. But unfortunately, it did take me a while to find this information. So when you were looking at why is it important to have an online registry, this is why. The last thing that I want to mention, because I know my time is coming up, is having again that one-- the online registration. To make it easier for entrepreneurs in the state of Nebraska to go up, to go to one place and find what are some of these regulations that they need to follow. I can sit here and talk to you about some of the city ordinances that have made it difficult for entrepreneurs, especially small businesses like the food truck, to open their business. I would like to take the opportunity to thank Senator Vargas and the committee for allowing me to testify today. Thank you.

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HALLORAN: Thank you, Mr. Hawkins. Appreciate your testimony. Any questions from the committee? Seeing none, I appreciate your time here. Thank you.

RAUL ARCOS HAWKINS: Thank you.

HALLORAN: Next proponent, LB740.

SCOTT SHEEHAN: Hello, everyone. Thank you for having me. My name is Scott Sheehan, S-c-o-t-t S-h-e-e-h-a-n, and I am the president of the Omaha Food Truck Association and a former owner of a mobile venue. And I come here today with some things prepared, but it sounds like everyone has my speech covered. So I don't want to repeat anything. I wanted to touch on a few things that were brought up, you had mentioned about, you know, are we replacing one with another? We are, but time. Time seems to be the one common factor that we can-- even Senator Brewer made a point about that also, is that offering these people time. And it's maybe it's time with their family instead of having to run to a county or anything like that. But time. So I think that was probably the most important thing that I wanted to make sure and express to everyone. My business, I unfortunately am part of Tony Vargas's story where I didn't make it my business. Anthony Piccolo's Mobile Venue, unfortunately didn't make it through the last couple of years, ran into some hard times, didn't have enough nuts buried, you know, so it didn't work out. But we move on. But I am here in support of my friends, because that's what you have here. You have the people that you, you know, you know, from down the street that opened a truck, too, that had the barbecue or, or the wieners or whatever else that was going on today. So it's really exciting to be a part of that see this happening because. We started the association, Kevin and Branden and I back ten years ago, in order to try to get here. And it's steps, like everyone has talked about also. So that's great. And so anything I can do to kind of help, or if we're looking for information on health departments and how they differ, I can tell you Sarpy County and Douglas County are very similar. And they both have their things that they look for, and they prob-- you know, and it's things that you might miss accidentally. They will educate you on it, but they will still make you accountable for it, because they will be important factors on making sure things are safe. You got your good water and things that you need to operate as a food truck, that's a little bit harder to keep sanitary than maybe, say, a restaurant or things like that. But for the most part, us as the association, we've kind of outgrown our-- what we were doing. A lot of our members have moved on, sold their businesses or lost them. But what we as an

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association want to do is kind of attach ourselves to the third part of the bill is we want to start offering information and guidance and consultation. OK, you want to know where to go? All right, I got this list that you can look at, you know, and, and start walking through. OK, here's where you can park. And the question-- or the answer to your question, do I-- can I put quarters in a meter is yes, that's exactly what I do. And 50 feet from a restaurant front door is what the ordinance reads in Omaha. So literally as the door swings, you can take 50 feet and I can park my food truck right next to your pasta joint, if I want to. So that's a-- so there are advantages to being a truck, too. But, you know, give and take. If it rains, you're the only one that's doing anything and I got to go home. So with that said, like I said, we want to be a resource. This is great. We're excited that this is coming. As it-- as Kevin mentioned, we're still-- there's still a little bit more to go to make it better for us to operate. And I think that's all I have to say in the matter. So I'll take any questions, thank you for having me. And Tony, thank you.

HALLORAN: Thank you, Scott. I appreciate it. Any questions from the committee? I have noticed, I'm in the food business myself. I have noticed there is-- and this is a positive thing, but there is a compulsion on the part of foodies to talk.

SCOTT SHEEHAN: Yeah. I had a lot to say, wanted to get it in there quick. Yeah.

HALLORAN: Thanks for your testimony.

SCOTT SHEEHAN: Yeah, you got it.

HALLORAN: All right. Additional proponents to LB740. Good afternoon and welcome.

JESSICA SHELBURN: Good afternoon. My name is Jessica Shelburn, J-e-s-s-i-c-a S-h-e-l-b-u-r-n, I'm the state director of Americans for Prosperity. Thank you for the opportunity to speak this afternoon. Hardworking Nebraskans shouldn't need permission slip to earn a living. Instead, we should embrace the entrepreneurial spirit of individuals who seek to pursue their American dream. LB740 is seeking to streamline the inspection and permitting process for food trucks. This bill takes a crucial step in cutting government red tape to make it easier for Nebraskans to launch a small business while supporting local economies. This is a welcome step that benefits not only food truck vendors, but the many communities that they could serve by

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creating more options. Something that you've heard a lot of this afternoon already. This can be done as proposed in a responsible manner with great benefit to the vendors and to those communities. You know, just to reiterate what some of the previous speakers have said, it creates a lot of opportunities, especially in rural Nebraska. And right now we are preventing that from happening. And at AFP, we believe that we succeed when we help others succeed. And this is one thing that you guys can do to help the individuals who spoke here today, and the many individuals who aren't here, succeed. And I think that it's very clear that there's still more work that we can do in this, but this is definitely a step in the right direction. And we applaud Senator Vargas for his steadfast endeavors in trying to help the food truck industry. And we would encourage you to advance this bill to the full Legislature. With that, I'll answer any questions.

HALLORAN: All right. Thank you, Jessica. Any questions from the committee? All right, seeing none. Very good, thank you.

JESSICA SHELURN: Thank you.

HALLORAN: Next proponent to LB740. Good afternoon and welcome.

JOHN HANSEN: Chairman Halloran, members of the Ag Committee, for the record, my name is John Hansen, J-o-h-n, Hansen, H-a-n-s-e-n, I'm the president of Nebraska Farmers Union. And no, I don't have a food truck, but I have thought that there were times when I helped provide the food and the refreshments for events, of which I've done a fair amount, actually, in my lifetime, that it would sure be handy if we had a more accessible food truck industry in our state. And especially in rural areas where we see more and more some of the food truck vendors all figuring out which niche they're going to serve. We're seeing also more local foods, which is good, and also featuring certain Nebraska products, which is good. And so as I look at this legislation, I look at it through a lot of the same eyes that I would use to evaluate cottage foods or farmer's markets. It's all a step in the right direction. I still think we need to go further in terms of being able to reduce the regulatory load. I like the idea of coming up with a more standardized set of regulations that everybody gets to follow so that you should not have to spend as much time as these folks obviously spent trying to figure out which set of regulations they need to comply with. And then the whole issue of fees, it seems to me, is being used in a very arbitrary kind of way that takes a lot of the fun and the economic opportunity out of the food truck business. But we have historically supported this industry, and I

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appreciate the comments of all the folks that have presented here today. And as we look on down the road, I think that while this is a step in the right direction, I still think we have room to go before we get to where we need to go in order to actually fully realize the potential of this portable food vendor business that we have in Nebraska. Thank you very much, and I would be glad to answer any questions.

HALLORAN: Thank you, Mr. Hansen. Questions from the committee? Seeing none, thank you so much. Next proponent of LB740. Proponents for LB740? Seeing none, are there anyone in opposition to LB740? Seeing none, anybody in the neutral capacity? All right, Senator Vargas, you're welcome to come back up. Before you start, Senator Vargas, we had online comments for LB740. Proponents, six; opponents, zero; neutral, 2. And as a successful football coach told me one time, sometimes you don't necessarily have to speak. Your team performed for you.

VARGAS: You see what you're laying down and-- yes. I want to thank the committee. I appreciate all testifiers, and I think they-- this is a lot of education, I know there's an interim study done by your committee, which I appreciate Senator Aguilar's efforts. I appreciate Center for Rural Affairs for their, their leadership on this, along with many, many other partners, including public health departments, municipalities, the food truck owners themselves. There's just a couple of things I want to touch upon, just because it is important in terms of the connection. When I got married, I had two food trucks that came to my 500-person wedding. I can tell you that they're not in business anymore. And I think what we heard are a lot of food trucks that are no longer in business for a variety of different reasons, but many of them connect to what we've talked about today and this legislation. I urge you to move forward on this amendment and to kick out this bill, because the step in the right direction is streamlining the processes, making sure that there's transparency on the ordinances across these cities, that will increase the competition. It will make sure that we can also see what the fees are specifically for all the food truck owners. And hopefully we're not done either, because I would love to do more in the future. Somebody will take this up when I'm term-limited out on fees and maybe a one-stop permitting process like Georgia just did. They just passed this this last year, at least out of one house. So I appreciate you. Thank you very, very much. And I hope we can earn your support to get this bill out of committee.

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HALLORAN: OK, thank you, Senator Vargas. Your team has an Igloo full of Gatorade they're about to-- all right, that concludes LB--

HUGHES: Oh, I have--

HALLORAN: I'm sorry. Yes, please, Senator Hughes.

HUGHES: All right. Thanks. Thank you, Chairman. And thanks for bringing this, Senator Vargas. Should there-- I looked at the fiscal note here. Would there be a fiscal note to create this website or database? And I'm assuming it would be on the Department of Ag's page or somewhere there?

VARGAS: Yes. So it would be on the Department of Ag's page. It would be up to the Department of Ag. You know, again, there's the ability for them to adopt or the rules or regulations to carry this out, but this would be on the Department of Ag to then create that, that page, maybe on their site.

HUGHES: So they just didn't maybe include that. [INAUDIBLE].

VARGAS: Yeah. Like Texas has some things like this. Yeah. But the point, the goal is if a food truck owner is looking and can see all these different cities, the ordinances associated and the fees, what they have to do to operate, it's all in one place. And as you can tell, there's owners that just said no to customers without knowing whether or not they even want to go through the hoops to contact that city and say--

HUGHES: Well--

VARGAS: --what, what do I need to do to operate? And that-- that's hard.

HUGHES: I think one thing that would help too, is if like, let's take Seward County, and if Milford's charging, I don't know, 120 bucks and Seward is charging 80 and Utica is charging 10, those three are like, wait a minute. You know what I mean? I mean, I think that would encourage some of that like, oh, maybe we're a little high here or whatever. So I think that would be beneficial.

VARGAS: So, so in past bills, I tried to cap the fees at one standard. But I will say this, hopefully the competition with--

HUGHES: Right.

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VARGAS: --everybody seeing what their fees are, municipalities will then look at their ordinances and decide maybe we should be more in line with what these other cities are doing so that we're, we're bringing more food trucks to our festivals or to our communities.

HUGHES: Which are going to pay taxes in your area that then you can use to generate-- anyway.

VARGAS: Correct.

HUGHES: OK. Thank you.

HALLORAN: Thank you, Senator Hughes. Any further questions?

HANSEN: One quick question.

HALLORAN: Passed your limit.

HANSEN: Didn't you used to always bring a food truck during your hearing?

VARGAS: I did. You know, I've been told you're camping props in this room, so otherwise I've been raining from the parade-- you'd get donuts, you'd get burritos. You know, many, many other things.

HANSEN: Do it when it gets on the floor for debate.

VARGAS: OK.

HALLORAN: All right.

HANSEN: Thank you.

HALLORAN: Thank you. Thank you, Senator Vargas. Appreciate it.

VARGAS: Thank you.

HALLORAN: We will break for 10, 10 minutes. 3:10, we'll be back at 3:10.

[BREAK]

HALLORAN: Back to the Agriculture Committee. I'm going to relieve you all the stress and strain of giving my spiel this afternoon. Most of you have been through this before and know what the policies are. I will just say, if you do wish to testify, there are green sheets back

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there. To please sign those white sheets if you just want your name on as participating in the committee hearing. With that, we will proceed with LB662, Senator.

BALLARD: Good afternoon, Chairman Halloran and members of the Agriculture Committee. My name is Beau Ballard, for the record, that is B-e-a-u B-a-l-l-a-r-d, and I represent District 21, which encompasses northwest Lincoln and northern Lancaster County. I'm here today to introduce LB662, which amends Nebraska's Right to Farm Act. According to the USDA, agriculture, food and related industries contribute over \$1.2 trillion to the U.S. GDP, and \$164.7 billion of that amount is a direct input from America's farms. Agriculture and the food sector provide over 21 million full- and part-time jobs, with direct on-farm employment accounting for 2.6 million jobs. Despite this large impact on the economy, there's a very-- and the very real task of feeding the world, our agriculture operations are under constant attack. Extreme environmental and animal rights groups, often with little to no experience in crop or animal production, seek to shut down farming operations that don't meet their standards. Meanwhile, we know that our agriculture producers are the best stewards of our land and their livestock. Not only do livestock depend on healthy soil and animals, but many have been in ag prod-- ag production for generations. Their success, success and reputation depend on innovating to get the best products in ways that protect their resources and their communities. One tool that we see deployed across the country to shut down agriculture operations is nuisance lawsuits. My goal with LB662 is not to prevent nuisance lawsuits, but to rather narrowly tailor the law to better protect agriculture operations from the time and cost of frivolous lawsuits while maintaining an avenue for valid claims. LB662 makes four changes to the Nebraska Right to Farm Act. First, it limits standing of those who can file suit to nearby landowners alleging the material violation of federal, state or local laws. This change will still allow those who may be affected by agriculture operations to seek the remedy while preventing outside organizations with no presence in Nebraska from using nuisance lawsuits to harass our agriculture producers. Second, LB662 create a rebuttal presumption that agriculture operation is not a nuisance if using commonly accepted industry practices. Now requirement does not guarantee an agriculture operation using commonly accepted agricultural practices will not be found in nuisance. Instead, it places the burden-- it places the burden on the complaint to demonstrate why practices used by the operation either do not meet the industry standard or why the industry standard is insufficient to

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avoid nuisance in specific circumstance. Third, LB662 states that an agriculture operation is not a nuisance merely because a change in ownership or size, nonpermanent cessation and interruption in agriculture activities, participation in government-sponsored programs, the use of new technologies or a change in the type of farm production produced. The provision is particularly important to protecting existing ag producers. Just like many businesses, our producers are constantly adapting and modernizing their operations, increasing their financial stability and exploring new opportunities. This provision will protect their ability to do just in the areas of our state which ag pro-- ag production occurs. Finally, LB662 sets the statute limitation in nuisance suits against agriculture operations at one year from the date of complainant first experiencing the nuisance. I want to be clear, LB662 does not, does not exempt agriculture operations from local, state or federal laws. Operations are still subject to permitting, zoning and setback regulations, as well as livestock and chemical regulations. With the passage of LB662 ag operations will have to comply with everything they do today, they just get to do without fear of frivolous lawsuits. I'm happy to work with the stakeholders on LB662. There will be many-- there will be many opposition behind me. Happy to work with them, including nonlandowner residents like tenants and someone with standing to a reasonable request. It is important to me that all our ag producers get to enjoy the protection of the Nebraska Right to Farm Act. I do have some industry experience behind me to follow testimony, but I'm happy to answer any questions.

HALLORAN: Thank you, Senator Ballard, for bringing this legislation. Are there questions from the committee? Senator Raybould.

RAYBOULD: Thank you, Senator Ballard. I, I know in your testimony, you just-- you kind of just really went through it pretty quickly, but, but how does this help or protect those who lease or rent land? Because the language in the bill says such a person owns a majority interest in the real property.

BALLARD: Yeah. And that's, that's still something we're working out with stakeholders to protect those who lease their own land.

RAYBOULD: So when I read it, you know, I was thinking of different scenarios that this could impact, you know, let's, let's throw out say your family has-- owns a vineyard and has been growing grapes for a really, really long time for like at least two or three generations. And then a farmer comes in and just wants to grow soybeans, soybeans,

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soybeans. And, you know, in that whole process, they they might have sprays or some herbicides or pesticides and, you know, with drift, it hits your vineyard. And, you know, that's, that's a grape killer for sure. And so how does this, how would that scenario play out with this piece of legislation?

BALLARD: Yeah, absolutely. Spray drift is an absolute problem that we experience in the grape growing industry. There, there is still remedies for that in this, in this legislation and within county regulations as well. This-- I don't believe this Right to Farm Act even touches that provision that you-- that hypothetical.

RAYBOULD: OK. Thank you.

BALLARD: Thank you.

HALLORAN: Thank you, Senator Raybould. Senator Riepe.

RIEPE: Thank you, Chairman. Thank you. The first handout that we have have a picture of Yorkshire pigs. Now, my question is is, is your legislation intended to be pandering towards the Governor?

BALLARD: I have not-- I have not spoken to the Governor on this issue.

RIEPE: OK. Just, I just wanted clarification. Thank you, sir.

BALLARD: Thank you.

HALLORAN: Thank you, Senator Riepe. Additional questions? All right, seeing none, thank you, Senator Ballard. Stick around for close? You'll stick around for close?

BALLARD: Of course.

HALLORAN: Of course. I'm going to ask how many people are going to testify today for and against.

_____ : [INAUDIBLE].

HALLORAN: Both. Right, OK. We will do 4 minutes. Hello. Welcome.

JESSICA KOLTERMAN: Hello, Senator Halloran and speaker-- Agriculture Committee. My name is Jessica Kolterman, J-e-s-s-i-c-a K-o-l-t-e-r-m-a-n, I am here representing Lincoln Premium Poultry, where I am employed. I first want to thank Senator Ballard for introducing this legislation. I wanted to give you a little bit of

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background how this legislation ties into the work we do. So we have farm families who have invested in agriculture operations, specifically to grow poultry for us across the entire region of the state. They're in about 21 counties here in Nebraska, and several in Iowa. And we were involved in our industry, we do a lot of conversations with other companies, other producers around the country. And at those conversations, we often end up discussing agriculture being under attack, people not understanding where their food comes from and those, those types of conversations. And so we started taking a look at the laws here in Nebraska, specifically the Right to Farm bill-- or act that passed several years ago. And in talking to people in this industry who are on the front lines, who have those farms, our farm families that grow for us, and then also visiting with people at our company, one of the questions was, is this legislation as tight as it could possibly be and does it provide the most protection we could possibly provide from nuisance lawsuits? And through those conversations, the answer was no, it's not as tight as it could be. So we talked about how we could strengthen that. And in having a conversation with Senator Ballard, we talked about the different ways and some of those changes you see outlined in his legislation. While I'm not going to get into the specifics of it, because I think he did a very good job of explaining that, I do want to say that we really like the parts of the bill that refers to the presumption that the farm that is using a commonly accepted agricultural practice is not a nuisance. And that that provision, I think was a good one, as well as some of the others that are there as well. So one of the questions I have been asked is why do this legislation, why now? And my answer for that is very simple, why not now? Every day that our farm families are farming, they are constantly attacked from different directions. As someone who's professionally advocated for farm families for almost 20 years. I've seen firsthand those things that are going on in our industry, and it really comes from all directions. It takes all kinds of tones. You have people who say, well, I'm not opposed to farming the way they're doing it. I just don't want it near me. You have people who are just against certain kinds of agriculture. You have people who have agendas to remove meat and protein from diets. And then you have what we all know is the generalized challenge of people who are just removed from agriculture, who don't have a knowledge of where their food is coming from. And so sometimes they can latch on to things that they hear and messages they hear in the media and so forth, and take those as gospel. So our farm families collectively have invested close to \$400 million in their operations in the state. In my county alone, it's over \$40 million.

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You know, if Senator Brewer was here, I think he would say \$40 million in his county, in a county that he represents in the Sandhills, that's a really significant investment in some of those rural areas. And so those are the types of things that we want to make sure we're protecting. And so that's why I'm here and want to see the farmers in our state have the best protection possible. Thank you.

HALLORAN: Thank you, Ms. Kolterman. Questions? Senator Riepe.

RIEPE: Thank you. Good to see you again.

JESSICA KOLTERMAN: Nice to see you.

RIEPE: You have a lot of expertise in here or maybe a great deal. My question is, how rigorous are the regulations regarding treatment of manure when the animals are part of the small farms?

JESSICA KOLTERMAN: So are you asking like for Lincoln-- from Lincoln Premium Poultry's perspective, what we do to make sure that our people are adhering to--

RIEPE: Well, I know one of the challenges, or at least that I've read a little bit about, is just the runoff of manure and--

JESSICA KOLTERMAN: Yeah, let me talk through that a little bit. I really appreciate that question because I think it really gets to the heart of some of the things we're talking about here. So in order to grow poultry with us and have a contract with us, all of our grower partners have to-- are required to get and maintain a Nebraska state operating permit. Now, that is not a permit that is required by law, but we as a company have decided to require that. So we have them go to the state. The state will say, well, based on your operation, you're not required to have this by law, but if you would like to have it anyway, you can continue forward with this process and so that we require it, so they do move forward in that process. What that involves is extensive soil testing, litter testing, nutrient budgeting, phosphorus risk assessments, and application setbacks and buffers. So they develop a nutrient management plan. It is on file with the state. The way it works is if they were to have litter come out of those barns, it is required to go through all those steps of that process for them to apply that litter to their fields. So from our perspective, we see our farm families as being part of the solution because all of that is documented and budgeted and there is a very specific process in which they have to use. That isn't always the

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case for nonlitter application, but that is something-- or people maybe who don't have those same rules, who use litter from other companies. But if you are a partner with us, we have three pillars of our contract that are non-negotiables. One of those is environmental, one of those is biosecurity, and the third is animal welfare. And we require that highest level of accountability and stewardship and regulation.

RIEPE: OK. A follow-up question with that.

JESSICA KOLTERMAN: Sure.

RIEPE: So I assume that at the beginning you're setting a benchmark, so you know what the soil is like before you ever start?

JESSICA KOLTERMAN: They do all the soil testing before they apply. Yes.

RIEPE: And then do you-- are there public hearings held to that what are the implications, say, of whether it's a pig farmer, chicken farmer or--

JESSICA KOLTERMAN: I don't-- I guess I don't--

RIEPE: Public hearings. Do you have in the communities?

JESSICA KOLTERMAN: Well, we-- on the front end when before they are given opportunity to grow for us, they all went through public approvals process.

RIEPE: OK. OK [INAUDIBLE].

JESSICA KOLTERMAN: So in those public approvals processes there may have been conditions laid out through a conditional use permit where a county might say you're, you know, we're going to give you the green light to grow for this company here on your farm, but these are the conditions in which we need you to adhere to. So every county can do that differently. Every county can set different conditions. I've been in counties where I've seen, you know, they wanted a tree buffer around the entire property. I've been in counties where they wanted certain setbacks. I've been in counties that said, if you're going to haul chickens to and from this site, you need to use this specific route. I mean, it's really up to the county, who is the approving body in that case, what that looks like. And if they wanted some kind of more stringent environmental protection beyond what we already have at

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the state level, they could propose that as part of their conditional use permit.

RIEPE: OK, thank you very much.

HALLORAN: Thank you, Senator Riepe. Senator Raybould.

RAYBOULD: Thank you, Ms. Kolterman, for coming. You know, I'm looking at the statute. Could you tell me what was meant by the language that says "The agricultural operation has materially violated a federal, state or local law applicable to an agricultural operation"?

JESSICA KOLTERMAN: Do you have a place in the--

RAYBOULD: Yeah, it's on page 3.

JESSICA KOLTERMAN: OK.

RAYBOULD: The very first sentence. There's no definition of materially violated, so I don't--

JESSICA KOLTERMAN: I'm not an attorney, so I don't want to pretend to be one and give you what that definition is.

RAYBOULD: OK. And then could I ask another question?

JESSICA KOLTERMAN: Sure.

RAYBOULD: So you have reduced the statute of limitation from two years to one. What was the reasoning behind that?

JESSICA KOLTERMAN: I don't know that there was a specific reason. It just that if you have a nuisance, it's going to be flushed out in the next-- in a year as opposed to two. It's just a-- it's lowering that number, lowering that threshold.

RAYBOULD: Well, you know, I think one really pretty big example, you know, with the Mead and AltEn contamination that, that has been known for quite some time, you know, since 2014.

JESSICA KOLTERMAN: But I don't believe that's a farming operation.

RAYBOULD: But it-- just an example on--

JESSICA KOLTERMAN: OK.

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RAYBOULD: --what I would consider a materially violated event that, you know, it took quite some time. You know, we're going on seven, eight years to try to resolve that issue. And, and normally the statute of limitations is roughly around four years, depending upon the classification of the violation, so I wanted to better under--
[INAUDIBLE]

JESSICA KOLTERMAN: We looked at other, we looked at other states to see what other states were doing. And that was a number that was recommended to me by kind of a survey of other states and what they were doing.

RAYBOULD: So what are some of the other states that you had looked at to [INAUDIBLE]?

JESSICA KOLTERMAN: It was, it was just a-- I didn't, I didn't say here, what is this state? Let's take this from the state or that from this state. I just said, what are other states doing? I didn't get into the weeds. I had attorneys look at all of that.

RAYBOULD: Oh, OK. Would someone else be able to testify on some other similar states that have adopted?

JESSICA KOLTERMAN: We can probably get that information.

RAYBOULD: OK. That would be wonderful. Thank you very much.

JESSICA KOLTERMAN: Sure.

HALLORAN: Thank you, Senator Raybould. Further questions from the committee? Senator Hughes.

HUGHES: Thank you, Chairman. Thank you for coming, Ms. Kolterman. OK, so let's say we do have a grower or farmer that is a bad actor. AltEn was a bad actor in the ethanol industry. One, how do you guys handle that? And two-- because that's where I think this would address, right, that bad actors? So kind of walk, walk me through, I guess what you do and then how will this hinder someone-- will this hinder us in dealing with the bad actor perhaps? So--

JESSICA KOLTERMAN: Yeah, I mean, that's not the intent, is to hinder.

HUGHES: Right, no.

JESSICA KOLTERMAN: But so let me give you a-- and so I talked about the pillar, the three pillars of our contract. So the three pillars over contract are biosecurity, animal welfare and environmental stewardship. And we have criteria outlined in the contract for all of those. If a farmer were to violate one of those and we were made aware of it, we would go in and write something called a corrective action plan, where we would say to the farmer, OK, this is what we have-- understand that you have done and this is not acceptable. And so we need this corrected. It's kind of like progressive disciplinary action in a, in a-- any kind of situation that you would have where you would go, you know, it's a warning, a progressive warning. And then eventually, if there would be continued violations, you would terminate contract and they would no longer be able to grow for us. And that is not something that we as a company would want to do. But if someone was in violation or negligence and continuing to break those pillars of our contract, we would have no option.

HUGHES: OK. And then if I can, that kind of leads me to another question. I, I keep hearing in my district, right, things vary by county.

JESSICA KOLTERMAN: Right.

HUGHES: And you guys have gone through, I mean, you've done your barns in my district, several of them.

JESSICA KOLTERMAN: Um-hum.

HUGHES: What-- I guess, what is that different-- I keep hearing, oh, a certain county has absolutely no regulation at all and this one has--

JESSICA KOLTERMAN: Well, I mean, I think, I think zoning is a really big, important part of this. So, you know, I'll use Seward County because that's where I live, that's where you grew up. You know, we looked at what is the zoning here? And I think that the zoning in Seward County, personally, I think it's written really, really well. It says these are the appropriate places to have agriculture. These are the places that are closer to urban areas. And the people that wanted to build barns in Seward County went in, they had hearings, public hearings. They went through that process. They were given conditional use permits through their appropriate county process. Now, were there maybe one or two neighbors in a few specific areas that we're concerned about a specific thing? Yes. One of those was traffic. Someone said, I don't want trucks driving by this specific road

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because there's more housing on this specific road. And so the counties said to us, would you be opposed to having a specific route that you were required for those trucks to go on, unless it's like a specific emergency or, you know, some weather situation or something? And we said, no, that's fine. And so we have in many of our cases in specific counties, we have specific routes that our trucks are required to use because that was part of the conditional use permit. Sometimes through that conditional use permit process or county approvals process, people will say, well, we want certain setbacks to be met from neighbors or we want certain tools to be used to look at before we make a decision. And so we used whatever tools they were asking for or we provided what information they needed. Sometimes you have a specific situation in a [RECORDER MALFUNCTION]-- no zoning at all. Any. None. Well, I'm not going to look at a farmer and say, I'm sorry. You, you know, there's no zoning in your county, but I'm going to tell you-- so we have-- but we have done that. You know, we have said no to farmers that wanted to build with us because they-- we did not feel their land was appropriately in the right place [INAUDIBLE] but not every, not every company is going to do that.

HUGHES: Right.

JESSICA KOLTERMAN: But, you know, sometimes we've tried to make a decision based on what may come-- we, using common sense as opposed to-- because some counties didn't have any zoning. So it really kind of depended. I-- you know, I was out on a farm yesterday. I spent a morning with one of our service techs. I walked eight barns with him. There were no houses in the vicinity of where I was at all because we drove from Rising City to--

HUGHES: In my district.

JESSICA KOLTERMAN: --in your district. We drove from Rising City to one of the farms. And one of the things that I did on that drive, which was, I think, three miles, is I counted the homes on the way. And with the exception of the homes that were associated with our farms, there were none. That's an appropriate place to put a barn. So I think zoning is a very important tool in this process as well.

HUGHES: OK. Thank you.

HALLORAN: Senator Hughes. Senator Raybould.

RAYBOULD: Thank you. Because that triggered another question--

JESSICA KOLTERMAN: Sure.

RAYBOULD: --that I had in mind. So the language in the bill talks about the property has to be located within a half mile of, maybe, the offending property to be able to file a claim. How did that come about and wouldn't that conflict with some of the zoning regulations in certain counties?

JESSICA KOLTERMAN: Well, I think, for us, I can only say that we're going to put, for our-- I can only speak for our company and what we do, but we use a lot of different tools when we were evaluating sites and locations. And for the most part, we didn't have a situation where we put-- unless it was a family owned home. There aren't a lot that are within that tight range. I mean, there's a few here and there, but in some cases, counties will require a notification. You know, there's obviously notification of those neighbors. And then there are some cases where we had neighbors who signed waivers that said, even though it is within a quarter mile of us and even though the zoning says that there should not be a livestock facility within a quarter mile of us, we're willing to sign a waiver that we'll take it and we're OK with it. So, I mean, I think that-- I think you can look at this with county partnership in mind. As Senator Ballard said, this is not an in-- it is not an attempt to eliminate all nuisance-- all lawsuits that are a nuisance nature. It's more to eliminate them as a tactic or a tool to try to drive out farming.

RAYBOULD: Well, another example that came to mind is, say a farmer has been farming their land for generations and the neighbor just sold their land and in comes a foreign country, bought the land and they have this huge hog operation. And you know, there's dust from the trucks and other things that are-- the, the air, the smells, you know, those usually transcend probably more than half a mile. But it seems like with this LB662, that, that neighbor would be prohibited-- the, the farmer would be prohibitive at filing a nuisance claim at the new neighbor, based on the language in this legislative bill.

JESSICA KOLTERMAN: I don't know that it would be prohibited. I think it would, it would be more clearly defined of how they could go about that.

RAYBOULD: Wait. Say that again. I'm not sure what you said.

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JESSICA KOLTERMAN: I said I think it's more clearly defined about how they could go about that. I don't think it completely eliminates the opportunity for them to file a suit. That's not the way I read it.

RAYBOULD: OK. All right. Thank you.

HALLORAN: Thank you, Senator Raybould. Any further questions? Senator Hansen.

HANSEN: Thank you. We had an issue in Washington County recently. It was a big hubbub about the county trying to, almost, rezone many areas of the county.

JESSICA KOLTERMAN: I heard about that.

HANSEN: Yeah. Yeah. I [INAUDIBLE] it. And I'm, I'm state, I'm not county, but it didn't really matter. But it seemed like they were trying to almost rezone the county to make it easier for suburbs or Omaha to move into, to Washington County by making it more difficult for, for small farms or, you know, like to have, like, more cows on there.

JESSICA KOLTERMAN: Um-hum.

HANSEN: I think they had a regulation that was like one chicken per acre.

JESSICA KOLTERMAN: Um-hum.

HANSEN: You know, it's like some crazy stuff. And so obviously, the people were up in arms about it, which they should have been, you know and it worked out really well. They went there and they testified and they ended up, actually, you know, getting rid of the ordinance.

JESSICA KOLTERMAN: Yeah.

HANSEN: So I never moved in that direction. How is that comparative to what we're trying to accomplish here with this? Are we trying to accomplish something similar, like being-- you know, allowing, you know, not trying to suburbanize, you know, country Nebraska?

JESSICA KOLTERMAN: Yeah. I mean, I think, I think this really all comes down to this disconnect between people and their food, which I think is anyone in rural America who's involved in agriculture can testify. You, you know, you have people who don't either give any

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thought to where their food comes at all-- from at all or they, they don't know anything about it. So they, you know, kind of hear things here and there that they think-- then they put them into categories of good and bad. I think there's perceptions of how agriculture is done today. And, you know, if it's big, maybe it's bad. I, I don't buy into the rhetoric. And our, our people that have invested in the operations where they support our business, they have said to us, after they keep seeing what happens has happened in other states. Right. Like the south-- southern part of the United States and the east coast, they keep hearing these lawsuits that are occurring and they said, what's to say that can't happen here? And so, the intent of the legislation is to tighten up or strengthen the right to farm language so that there is less chance of that happening here.

HANSEN: Can I ask one more question? Is that OK?

HALLORAN: Sure.

HANSEN: In, in, in your opinion, is this more about like this is still more about livestock or agriculture in general, or is it?

JESSICA KOLTERMAN: I think it's all agriculture. You know, I-- we-- I explained the process that we do for our people to apply litter to the land. I mean, it's very highly regulated and very stringently documented. And we audit those records to make sure that they're doing what the contract with us says they will be doing. But not everyone who uses any kind of fertilizer, whether it's organic or livestock-generated fertilizer, whatever it is, you know, they don't have the same level of accountability or regulation on everything that, that we require as a company. For example, who's to say that there couldn't be a lawsuit that says no one should fertilize their land anymore? You know-- or that would lead to that. So I don't know that it's about livestock, specifically. I think it's about all farming practices for people who say, I, I don't like that farming practice and I'm going to do a lawsuit against that.

HANSEN: Can I ask one more? Is that OK, Chairman?

HALLORAN: You bet.

HANSEN: Sorry.

JESSICA KOLTERMAN: That's all right.

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HANSEN: Because I've been getting a lot of emails about this, right, even from constituents with, with, with valid concerns. Right. And so, I have a strong affinity for, for smaller farms and for, you know, people who want to do what they want with their land, whether it's organic farming or you know, other kinds of practices. You're-- so what you're saying, though, there's still a recourse, right, if there is some kind of, you know, issue between a larger scale operation coming in next to a small family farm. That small family farm, you know, if, if it does become more than a nuisance above and beyond what the bill's intent--

JESSICA KOLTERMAN: Correct.

HANSEN: --there still is a recourse, though, for them to-- whether it's through the county--

JESSICA KOLTERMAN: Correct.

HANSEN: --whether it's through the courts to address the situation. Right?

JESSICA KOLTERMAN: That's my understanding, yes.

HANSEN: OK. All right. Thank you.

HALLORAN: Thank you, Senator Hansen. Further questions from the committee? Seeing none, thank you, Ms. Kolterman.

JESSICA KOLTERMAN: Thank you.

HALLORAN: Next proponent to LB662. Good afternoon and welcome.

BILL HAWKINS: Good afternoon, Senator Halloran, members of the Ag Committee. My name is Bill Hawkins, B-i-l-l H-a-w-k-i-n-s. I'm here in favor of Senator Ballard's bill and I would like to welcome my new senator from District 21 to the Legislature and thank him for his willingness to serve in this great legislative body. I'm a lifelong Nebraskan and over 40 years ago, in growing up, I wanted to buy-- move out into the country. So I purchased a 50-acre old farmstead a mile south of Branched Oak Lake, just north of Lincoln. I've lived out there over 40 years and coming from the city, I have seen the interaction of rural and suburban life. I became an organic farmer, planted trees, an orchard. I was active in the Sustainable Ag Society. In going to their conferences every year, I saw all these young, young kids of these entrepreneurial farmers, small farmers, sustainable

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farmers, Senator Hansen, that were running around. So I helped start a kids program with the sus-- Sustainable Ag Society, to where they were actually putting on seminars at our conference. So I've been very involved with the agricultural community. I'm not real big on big, giant, commercial agricultural operations. But here in the state of Nebraska, we are an agricultural state and so we need to be able to produce food here in the state of Nebraska. And so, what Senator Ballard's bill does is prevent frivolous lawsuits. As you've heard testimony, Lincoln Poultry came in to produce chickens. We need to eat chickens here in the country. I mean, people-- it's a product that people need. So they've testified that they are very sincere in their environmental outlook, their sustainability and their welfare of the, of the animals they take care of. There are processes prior to an agricultural operation being permitted in a county that people have the ability to go through: public hearings, permitting processes. So this bill does not prevent that. It just prevents some out-of-state organization or other complaining factors that you will hear from behind me, paid lobbyists and all kinds of other people. But I'm coming to you as a citizen that we need to protect our agriculture operations here in the state of Nebraska. And we need to look at more sustainable operations so that we can actually feed ourselves. So I thank you for your time and I thank my senator for his willingness to come into this legislative body. And I would be happy to take any questions you have.

HALLORAN: OK. Thank you, Mr. Hawkins, for your testimony. Any questions from the committee?

BILL HAWKINS: Thank you very much for your time.

HALLORAN: Appreciate it. Thank you. Additional proponents to LB662? Seeing none, opponents for LB662. How many are opponents? All right. Well, if you would, respectfully, choose the front row, choose the front row so we can expedite this process. You're all bashful. I understand. Good afternoon. Welcome.

JONATHAN LEO: Good afternoon, Senator Halloran, members of the committee, Chair. My name is Jonathan Leo, J-o-n-a-t-h-a-n, last name L-e-o. I'm an Omaha resident, formerly a Lincoln resident. I'm also an environmental land use and administrative law attorney of 40-plus years. I've been involved in animal feedlot regulatory reform work in Nebraska since 2017. I have brought nuisance lawsuits as a practicing attorney in California. I've also defended a landfill against a neighborhood that was suing in nuisance, so I'm very familiar with

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this territory. And I started out my career as an environmental crimes prosecutor with the city of Los Angeles, writing ordinances on environmental laws and, and land use laws, as well, over 40 years ago. What I would like to say about this bill is that even under-- conceding Senator Ballard's rationale for the need for this bill to prevent frivolous lawsuits, that, as he puts it, weaponize nuisance law to attempt to eliminate livestock production in Nebraska because of people who don't like meat consumption. This is an anticipatory threat, so far as I know. I'm not aware of anything like this that has materialized. And one of the concerns that I have is that this bill, again, even conceding that there is a threat that needs to be guarded against, that existing law cannot achieve, this bill paints with far too broad a brush and actually does, as currently written, disenfranchise and eliminate the right to-- rights to the courts in the way of nuisance lawsuits. A vast swath of Nebraskans, including small farmers, residential occupants, people who have owned their land for decades, people who are several miles away from circumstances that because of their size, are very, very legitimate nuisances. Pache, Jessica Kolterman. It's not true that this bill allows people other recourses to the courts if there is no violation of federal, state or local laws, regulations and ordinances, if they are also more than a half-mile away from where the source of the nuisance is and they are not a majority owner of the land that is besieged by the alleged nuisance. If you're a minority owner of land, if you're a tenant or a, a lessee of land, you cannot sue in nuisance because of an agricultural operation preventing your use and quiet enjoyment of your property, period. According to this, this bill as presently written, if you are more than half a mile away from the source of the nuisance, you are denied standing by this law, by this bill, if it becomes law in the state of Nebraska, to bring a nuisance lawsuit to protect your interests. It is true, as Senator Ballard says, that this bill does not preempt local ordinances that establish set back limits for agricultural operations, whether they are livestock production operations or otherwise. What it does do, however, because, particularly the half mile setback cut off, is it frustrates, almost completely, the purpose behind setback ordinance limits, which are designed, as we know from a number of counties that have considered this-- some have decided they want those, some have decided they don't. But where they have decided that they do, they've made very carefully evaluated choices. Am I already at-- out of time?

HALLORAN: Pardon me.

JONATHAN LEO: I'll just finish my sentence, if I may.

HALLORAN: OK.

JONATHAN LEO: They've made very considered choices about where livestock operations should be distanced from sensitive occupancies: churches, rest, homes, hospitals, etcetera. And some of those are one and a half miles in Lancaster County. If there is a violation of a nuisance-- if there's a nuisance created by an agricultural operation that was cited more than a mile and a half away, there's no recourse.

HALLORAN: OK.

JONATHAN LEO: Thank you.

HALLORAN: Questions from the committee? Senator Riepe.

RIEPE: Thank you, Chairman. I have a question [INAUDIBLE] is out of the bill. It says, shall not be found to be a public or private nuisance. And my question is, by whom? Who makes that decision?

JONATHAN LEO: That's a good question. It's not clear from the bill. There are a number of provisions, Senator Riepe, in the bill that are not defined, that are clearly important definitional terms that, in this bill, do not have definitions. Nor are there any references in this bill for those kinds of terms to other places in Nebraska law where there could be definitions that would apply here.

RIEPE: OK.

JONATHAN LEO: It's a vacuum.

RIEPE: I have a follow-up question that I'd like to ask and that is who has the burden of proof? Which side of the--because you're at a disadvantage if you have to be the one that proves that there is or isn't a nuisance.

JONATHAN LEO: Well, if you're the, if you're the offended land occupant and you believe that you have a credible case, that there's a nuisance being created by a neighboring landowner or laboring-- neighboring operation, you bring the nuisance lawsuit, file a complaint in a, in a local court alleging a nuisance. And as the plaintiff in that action, you initially have the burden of producing evidence to demonstrate that, in accordance with civil law, by a preponderance of the evidence, you have established the so-called prima facie case, that there is, in fact, a nuisance, which means every element of what Nebraska says nuisance law is, you have

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demonstrated, again, by a preponderance of the evidence, you can prove it. If you can do that, then it shifts to the defendant to defend that.

RIEPE: It would seem to me a couple of things would be air quality and the other one would be, maybe, water quality?

JONATHAN LEO: Yes.

RIEPE: But that could get incredibly expensive because in air testing, you know, I mean, you can't just do it on, you know, Valentine's Day and say, well, that's it. You know, you'd, you'd have to have multiple samplings. I think-- I don't-- I'm, I'm not in-- I don't know anything about it and yet, I'm talking, but--

JONATHAN LEO: You're going in the right direction. Absolutely. I mean and the, the idea of nuisance law, it's common law. It's historic. It's very old, in, in the United States and British law. It is designed to be the last resort for people who are suffering from interference with the use and quiet enjoyment of their property by businesses or activities, which may also be in complete compliance with all laws but even so, are creating nuisances. If it's a water contamination issue where several miles, possibly, upstream of your property, there's an operation that has discharged and I'm not just talking about chicken CAFOs, I'm talking about any kind of operation. It could be road cropping, it could be other kinds of livestock production operations--discharges contaminants from some production area that do reach a creek or a stream and then begin to migrate downstream, downgrading it from that offending source. It could take, particularly if it gets to groundwater, years before somebody down gradient, possibly five, six more miles away from the source, discovers that their private drinking water well is contaminated. And once they find out it's contaminated, it may take another several years for them and at much expense, as you indicated, to trace it back to the source. And if there's a one-year statute from the time, in this sort of situation, where you're drinking water well-- you find out your drinking water well has been contaminated, there's almost no way, almost no way that you could credibly develop a nuisance case within one year to establish who the source was, let alone that they had a, a probable-- a direct impact on, on your well.

RIEPE: May I have one more question, Mr. Chairman?

HALLORAN: Please do.

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RIEPE: Thank you. My follow-up question of that would be, too, is this might not just relate to animal operations. You know, you have fertilization, nit-- nitrogen, I mean runoffs that are, particularly in central Nebraska, are.

JONATHAN LEO: Um-hum.

RIEPE: --accused of being the cause or from the university, at least, saying that they might impact or contribute to childhood cancers.

JONATHAN LEO: Right.

RIEPE: And so, this thing, all of a sudden, takes on a much bigger story than just a chicken farm or a farm pig operation.

JONATHAN LEO: No. Absolutely true. And as, as Senator Reynold's question earlier, I forget whether it was to, to Senator Ballard and Ms. Kolterman, indicated atrazine drift from a road-cropping operation can become-- airborne drift can affect properties, potentially, several miles away from the offending source. And atrazine also has been linked to certain central nervous system cancers, as, as doctors Rogan and Bell from UNMC have, have indicated in the studies that they've done. There is a correlation but not a causation that has been established between certain kind of livestock feeding operations where nitrates are generated and central nervous system cancers, in particular, brain tumors in children. Nebraska is in the top ten in the country in this area.

RIEPE: I'm a kid that's cleaned out a chicken house, so I know how challenging that can be. Thank you. Thank you, Chair.

JONATHAN LEO: Like Hercules with the Augean stables. Yes.

HALLORAN: Senator Raybould.

RAYBOULD: Thank you, Mr. Leo, for coming down. You know, I thought the Nebraska Right to Farm Act was to prevent city slickers like me moving into an acreage near a feedlot and writing a complaint about, heck, this really smells, you know. Do you have any better understanding of the Right to Farm Act besides, it protects that original operation?

JONATHAN LEO: First in time in a location means that you cannot have-- you cannot be sued for a nuisance by someone who moves into the area after you have established your operation. They cannot claim you're a nuisance because the theory is they have been put on notice. They

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should have been on notice, constructive or actual notice, that there was at least the possibility of an agricultural operation that could be sited in their area, both prospectively and retrospectively. You should be on notice that one exists and you should be looking, doing a due diligence before you buy, possess or re-interest in real estate to see whether or not you're buying near a place that might create problems for you. And if there is and you go in any way, you can't complain about that operation later on. That's the first in time protection. That's where nuisance immunity starts and I would argue that's where nuisance immunity should stop. There are a number of cases where-- that I, I, I know about and, and can give chapter and verse on. One of them is in Senator Hughes's district. I've talked to her about this in western Butler County, where a fourth generation family farmer who farms approximately 170 out of 200 acres, is living now, since 2020. The farm has been there since 1930. He's owned over 100-- he's owned 100 percent interest. It was passed down to him by his grandparents through his parents. And there are three 16-barn sets of Lincoln Premium Poultry chicken broiler barns, almost a half a mile from where his property is located. This bill does not provide metrics for how to calculate where that half a mile is measured from. Unlike every county setback limit, which does say the metrics-- from this part of the property line to that part of the neighboring property line. No guidance here on that. However, this is a guy who, because he is to the north of the 16-barn-- three sets of 16 barns, that's 48 times 47,500 chickens. When the prevailing wind is from the south, he is no longer able to go out into his backyard and grill steaks. He can't go out with his dog and at times, it pervades his home. And he makes a point of not going home, but staying at his agricultural equipment, purchase and sale and maintenance business about 30 miles to the west. If the law passes and depending upon where you measure the half mile from, he could be precluded as a matter of law from filing a nuisance lawsuit, even if those chicken barns are in compliance with all applicable laws. And as we know, Butler County has no zoning ordinance. His township in Butler County passed a zoning-- not a zone-- well, it passed a zoning ordinance in 2006 to prevent a dairy from being located in his jurisdiction. And when he complained to his couns-- his, his, town council members that that ordinance should be protecting him, they said, we don't have the resources to enforce this. So effectively, he is without legal recourse unless he can bring a nuisance lawsuit. And what I would suggest is that putting a distance limit on where a legitimately injured property owner can bring a nuisance lawsuit to protect their interests is, frankly, a disenfranchisement of, of, of the rights of all property occupants and

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owners. The measure should be: is there a nuisance? And there-- of course, there can be bogus claims. There can be frivolous lawsuits. I'm not familiar with them. It's expensive to do this. And as Senator Riepe was, was asking me, there is a procedure for the person who brings the lawsuit to show, very quickly, that you've got the goods to establish that there's a nuisance. If you don't, you're out of court, no matter how much money you've got. And that's the concern, is that the half-mile setback requirement is for standing, as well as the majority interest in, in, in ownership, are arbitrary and, I believe, completely illegitimate standards upon which to measure where the right to induce is-- to bring a nuisance lawsuit should be measured.

RAYBOULD: I have two more questions.

HALLORAN: Senator Raybould.

RAYBOULD: Thank you. So also in this bill, it talks about a one-year statute of limitations. And I know the, the Right to Farm Act has a two-year, but you mentioned that a little bit, as well, in your re-- remarks. Have you seen that anywhere else in-- across the United States where they have such a tight window for a statute of limitation?

JONATHAN LEO: Well, I have to, first of all, disclaim having done any due diligence on that subject. I can't tell you that one way or the other. It would not surprise me if certain jurisdictions have done so. I'm not familiar with it. I forget who it-- perhaps it was you who mentioned four-year statute of limitations for civil actions alleging injury to land, which is what a nuisance lawsuit is. My experience is and not just in California, in other states as well, is that four years is standard. I would remind the committee, I'm sure many of you are familiar with this from 2019, LB227, the last time that the Right to Farm law was amended in, in Nebraska, established the two-year statute of limitations. It was a very hard fought, very contested legislative process. I don't think every-- I know everyone did not get what they wanted from it. Since that bill was passed and has become law, there have not, as far as I'm aware, without having done the lawyer's completely exhaustive search, no nuisance lawsuits filed in the state of Nebraska against agricultural operations, at least against CAFOs, that I, that I know of. I would suggest that not only does this support an opposition to the, the cutting in half, the statute of limitations, from two years to one year, because it is not broke and therefore, it doesn't need fixing. But it, again, disenfranchises landowners and occupants who are legitimately

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suffering from off-site contamination, whether it's airborne or waterborne, from having the necessary time, once they realize they have a problem, from doing the due diligence necessary to find the source of that problem and establish enough of a factual basis to justify bringing a nuisance lawsuit. That would be my answer.

RAYBOULD: OK. Thank you. My last question and I had asked this of Ms. Kolterman, to me-- I'm not a lawyer, but I still don't know what they mean by-- it's on page three, the very first line, the agricultural operation has materially violated a federal, state or local law applicable to an agricultural operation. Is that the standard legal term? And if so, I would suggest there has to be a definition in this bill, but--

JONATHAN LEO: Well--

RAYBOULD: --what does it mean to you as an environmental attorney?

JONATHAN LEO: --I would say that it is a standard that is, arguably, unenforceable unless there is, either by regulation or by statutory amendment, a very clear definition of what it means to be in material, either in material compliance or in material violation of an applicable federal, state or local law, regulation or ordinance. There is none in here, as I mentioned to Senator Riepe in a different context, it still applies here; there is also no part of this law that says the definition of materiality as material is referenced in LB662, shall be referenced back to a different statute that already exists so that there is some reference standard. That doesn't exist here either. I would not know-- I would have no way to advise a client, let alone a landowner, how to determine whether or not-- or, or, or somebody who has a major CAFO operation, how to determine whether or not you have-- are approaching or have crossed the materiality threshold with respect to what compliance means. We don't have time here, but I would say that also, materiality is not only a matter of defining it precisely in the statute over regulation, it's also a function of what the enforcement regime is, with respect to those laws, statutes, regulations or ordinances. And here, Nebraska is, in my judgment, deficient with respect to having a robust regulatory enforcement system that can be relied upon by people who legitimately feel that their property interests are being harmed by any kind of offending operation, whether it's industrial or commercial, agricultural or otherwise. The enforcement element plays into it. You can't have enforcement if your laws are ambiguous and vague. Right now, this is, in my judgment, ambiguous and vague.

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RAYBOULD: OK. Thank you very much. Thank you, Chair.

HALLORAN: Any further questions from the committee? Quick, quick question. So, I mean, this narrowly tries to define close proximity in majority ownership--

JONATHAN LEO: Right.

HALLORAN: --to file a nuisance lawsuit. Can-- are there any limitations now on how proximate someone has to be, to be a legitimate nuisance claim?

JONATHAN LEO: Not that I'm aware of, Senator.

HALLORAN: So if someone outside the state--

JONATHAN LEO: I'm sorry?

HALLORAN: --someone outside of the state of Nebraska could file a nuisance.

JONATHAN LEO: Anyone-- well, let me put it to you this way. If someone who occupies property in-- well, if somebody, if somebody outside of Nebraska is trying to bring a nuisance law violation against an in-state operation, agricultural operation, they would be dealing with diversity jurisdiction, whether or not they have the right to claim a violation, in their state, a violation of a different state's laws. I'm not sure about that, to be very honest with you, I think it's extremely unlikely unless, for instance, I mean, possibly if you have extremely-- extreme eastern Omaha industrial operation, the winds are blowing east across the Missouri River into Iowa and you have a serious contamination issue whether it's, it's waterborne or airborne, that would be the only kind of circumstance I can imagine where somebody from out of state would be able to claim that they are suffering from a nuisance created by an in-state operation, if I'm understanding your question correctly.

HALLORAN: So it's unlikely, but it's possible that an interest group from California could file a nuisance suit against an operation in Nebraska?

JONATHAN LEO: Unless they own and occupy property in Nebraska, I think it's almost impossible. And, and I, I was beginning to have a conversation with Senator Ballard about this before the hearing. The threat from outside interests, either outside of Nebraska but within

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the United States, let alone extra jud-- extra terre-- not extra terrestrial [LAUGHTER], outside the, outside the continental United States. China, for instance.

HALLORAN: We're not talking about balloons here.

JONATHAN LEO: We're not [LAUGHTER]-- well, agricultural balloon-- I don't know about agricultural balloons, but we're not talking about extra-jurisdictional issues here. And, and if there is seriously a threat from national organizations that are trying, because of their antipathy to meat consumption, to shut down Nebraska's food production industry, agriculture industry, they, in my judgment, would have to acquire property in Nebraska in a very deliberate way, in close proximity to a CAFO or to where they think a CAFO might be sited and bide their time until they had the makings of a nuisance lawsuit. Now, that's extraordinarily conspiratorial and it requires not only a great deal of money, but some pretty serious odds-making about whether that opportunity would ever arise. It's possible to be sure, but I think it's extremely unlikely.

HALLORAN: All right. Thank you, sir. Any additional questions from the committee? OK. Thank you for your testimony. Next opponent for LB662.

JANE EGAN: Good late afternoon, Senators. My name is Jane, J-a-n-e Egan, E-g-a-n. I reside on five acres in southwest Lancaster County. I want to preface my remarks by saying that ordinary citizens are already heavily burdened by having to make extraordinary efforts to protect their property rights from nuisances stemming from CAPOs and that LB662 adds to that burden, as I will demonstrate in my testimony. I serve as chair of the Lancaster Hills Alliance, which is a group of neighbors and activists that organized in 2018 to oppose Costco's wholly-owned subsidiary, Lincoln Premium Poultry and their chicken barn operator that applied for a special use permit to build four chicken barns adjacent to a housing development of 90 residents in southwest Lancaster County. So the 90 residences were first in time, not the chicken barns. They came after. Our members testified at the county board hearings opposing the permit. We sent emails to county board commissioners, met with planning department staff and consulted with legal counsel to find a way to stop the construction of the barns in this built-up residential area. Ultimately, the County Board of Commissioners ignored the pleas of their citizens and approved the special permit to allow the barns to be constructed. These barns house 47,500 chickens each. The chicks arrive at the barns and are confined for six weeks until they reach a predetermined weight and then are

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sent for slaughter at Lincoln Premium Poultry's Fremont processing plant. The amount of manure waste produced by 190,000 birds every six weeks and the disposal of chick mortality is enormous and presents an environmental pollution issue for nearby property owners. So local property owners decided to take action to preserve their rights. Lancaster Hills Alliance members researched the county's ordinance regulating confined, confined animal feeding operations and found it to be totally lacking. The Alliance then decided to take legal action against the Lancaster County Planning Department, the county commissioners and the permit applicant to seek a remedy through the courts to overturn the permit approval. I and two others were plaintiffs in that case. We had to raise money to pay for an attorney. We did this by holding garage sales, setting up a Go Fund Me account and soliciting funds from Alliance members. Through those efforts, we raised over \$20,000 for legal fees. Ultimately, our case was appealed to the Nebraska Supreme Court, which held the lower district court's decision that the special permit approval was valid in the narrow confines of the current law at that time and should stand. The ruling was a disappointment, but our members continued to seek some justice by pushing the Lancaster County Board to form a special task force to develop new comprehensive regulations for CAFOs in Lancaster County. Strict regulation, regulations were adopted and signed into law. In 2019, we were once again faced with another issue, this time to change in-- this time a change in the state's right to farm bill. The bill sought to eliminate the ability of citizens to sue CAFO operators for creating a nuisance to property owners. Again, our members activated and contacted state senators, wrote letters, sent emails, attended hearings. We, along with colleagues from other groups that also oppose the proliferation of CAFOs in Nebraska, were able to make a compromise with legislators in 2019, to change the time allowed to file a nuisance down to two years. I believe, at that time, it had been set at four. We think this compromise is restrictive enough and see no reason to change it. LB662 is now seeking to not only reduce the time from two years to one to file a nuisance suit against bad actors, but it goes even further by restricting who can file a suit and the distance they must live in relation to the offending CAFO. It should be noted that no suits have been brought against a CAFO since the 2019 change of the law. So it appears that the rationale for the current proposed changes is to find a solution for a non-existent problem or perhaps, CAFO owners or operators are anticipating-- I'm sorry, can I finish? I just have a couple more paragraphs-- are anticipating many lawsuits in the near future due to the large number of CAFOs now operating in Nebraska and want to fend off being held accountable for

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their actions. The conflicts between residential property owners and agricultural operations have been exacerbated by counties approving the development of agricultural zoned land for new residential housing. At the same time, counties want to support agriculture and approve permits that allow CAFOs to proliferate near communities and housing developments. This sets up an obvious conflict for both property owners and CAFO operators. LB662 is just a tool to use the state government apparatus to protect CAFO operators from being held accountable when they cause a nuisance to property owners. We oppose LB662 because it restricts the right of property owners to seek justice through the courts to protect the general welfare of citizens, in favor of big ag corporations wanting to avoid nuisance suits. We need a-- to find a balance or face the consequences of ongoing conflicts between property owners and CAFO operators. This bill does nothing to advance that goal. We therefore oppose LB662.

HALLORAN: OK. Thank you, Ms. Egan. Any questions from the committee? Senator Raybould.

RAYBOULD: Thank you, Ms. Egan, for coming down. So you mentioned that Lancaster County Planning Board was able to change the zoning regulations after the lawsuit that you filed was appealed and the appeal from the operators held. So have any lawsuits been filed in Lancaster County since that time?

JANE EGAN: Not to my knowledge.

RAYBOULD: And do you feel--

JANE EGAN: And no, no other new CAFOs have asked for special use permits in the county, to my knowledge, since then.

RAYBOULD: OK. Thank you.

JANE EGAN: OK.

HALLORAN: Any additional questions? Seeing none, thanks for your testimony. Next opponent to LB662.

JAREL VINDUSKA: Senator Halloran.

HALLORAN: Good afternoon.

RIEPE: No thanks.

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JAREL VINDUSKA: Senator Halloran, members of the committee, my name's Jarel Vinduska, spelled J-a-r-e-l, Vinduska is spelled V-i-n-d-u-s-k-a. I want to start out by saying that most of you are probably, I suspect, are pretty familiar with the Nebraska Constitution. But if you read the, the-- Article I of the Bill of Rights, I'll read it exactly so I don't-- so I get it right. It says no person shall be denied life, liberty or property without due process of the law, nor denied equal protection of the law. When I read this bill, everything that's new in the Right to Farm Act appears to be denying equal protection of the law. You can go through it line by line. You have to own the majority interest. Well, as has been mentioned, a tenant, a tenant doesn't get equal protection of the law. And you go with-- right on down the line, every one of them is, is an attempt to deny equal protection of the law. And I would, I would suggest, I would suggest even though, like all of us, we, we probably hate frivolous lawsuits, I don't think it's the job of the Nebraska Legislature to determine what is frivolous or not and put it in, put it in legislation. I think that's the, the duty of the court to determine what's frivolous or not and that can sometimes be dealt with by causing somebody to bring a frivolous suit, to have to pay court costs and things like that. So it's the judge's job to, to do that and not, not-- like I say, not the Legislature. And I'll keep it short because I'm sure, you know, a lot of this stuff is going to be repeated. But even that-- Senator Raybould, you, you gave that example about the, about the grapes. Well, somebody could be raising grapes and not be able to see where it outright kills them, like if there's, if there's a adjacent landowner-- and like I say, I have a farm myself, so I understand the, the-- it's in southwest Sarpy County, so I understand the challenges of, you know, not creating a nuisance. But your grape example, you might not necessarily kill the grapes outright, but a guy, the owner of that vineyard might notice his production going down a little bit each year just because they were stressed but not outright killed. And first thing you know, you can't make a living off of it anymore because you've been impacted. And like I say, I just-- oh, I know there's a lot of people that talk. That's basically my point that, that we have no business limiting who has due, due process, so any questions? I'll quit there.

HALLORAN: Thank you, Mr. Vinduska. Any questions from the committee? Seeing none, thank you so much. Additional opponents to LB662. Good afternoon and welcome.

JONATHAN URBOM: Good afternoon, Mr. Chairman, honorable members of the Agricultural Committee. My name is Jonathan Urbom, last name is

U-r-b-o-m, my first name is J-o-n-a-t-h-a-n. I'm testifying in opposition to LB662 on behalf of the Nebraska Association of Trial Attorneys. LB662 is a solution looking for a problem. There is not a nuisance lawsuit litigation problem in Nebraska. I have heard the term frivolous lawsuit several times during the last hour in here. I thought that might come up, so I called a recently retired district judge who-- district encompassed Red Willow County, Chase County, Dundy County, Frontier County, Furnas County, Dawson County, Gosper County. I may have missed one in there. I asked him, over his 15 years on the bench, which ended about a year ago, how many nuisance lawsuits he had. There was one. That involved the noise from a grain bin dryer at a co-op and the plaintiffs or the complaining party lived across the street and didn't like the noise. So in those rural counties where the economy is dependent upon agricultural operations, there was not a single lawsuit filed related to nuisance activity other than related to the noise of a, of a grain bin dryer. Nuisance actions in Nebraska are already a very high bar to meet if you're going to prove that someone has created a nuisance. Our Supreme Court has indicated or has stated that rural residents must expect to bear with farm and livestock conditions normally found in the area where they reside. Our Supreme Court has also said, the annoyance must be such as to cause actual physical discomfort to one of normal or ordinary sensibilities. The annoyance must cause actual physical discomfort, under our current law, in order for an annoyance to be considered a nuisance. That's a pretty high bar. The current Right to Farm Act prohibits me from moving from the Lincoln city limits out to an acreage near Hickman and saying the farm operation or ag operation next to me is a nuisance. That's fair. That's reasonable. I shouldn't be able to go buy a new place next to some place I don't like and then file a lawsuit saying I don't like it. That is a reasonable law to have in Nebraska, but L-- LB662 essentially immunizes agricultural operations, agricultural operations from any nuisance lawsuits that could potentially exist. The majority ownership interests that are required for a complaining party has all sorts of problems with it. People lease land, people rent land, siblings share property. For example, you may have three siblings that all own a third ownership interest in a property. If they had a nuisance-causing ag operation next to them, none of them would have standing or access to courts because of it. If a nuisance operation moved in next to me-- and I live on an acreage out by Hickman, which I recently moved to and love it out there-- if they moved into me-- next to me right now and my kids were sick because of the water or they were sick because of the air, I wouldn't have standing to bring a nuisance lawsuit because right now, Wells Fargo

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owns more of my home than I do. I'm not a majority owner. The fact that lawsuits for nuisance can only be limited to a half mile from the source of the nuisance causing event or whatever is causing the nuisance, is, is extremely arbitrary. You know, most of the nuisance that you're going to deal with is-- happens to deal with noise, air pollution, water pollution, water flows and air blows and it doesn't stop at half a mile. The other issue--

HALLORAN: I think, I think we'll probably have questions for you--

JONATHAN URBOM: Thank you.

HALLORAN: --that might extend your-- thank you for your testimony. Any questions from the committee? Senator Hansen.

HANSEN: You seem like the right guy to ask. You're a lawyer, anyway. So maybe I'm, maybe I'm totally reading this wrong, but because of nuance, nuance law, you said if somebody privately owns land, is a majority owner and there, say, is nitrates going down the water into their property, would that be recourse for a nuisance lawsuit?

JONATHAN URBOM: If it caused actual physical discomfort as a normal, ordinary person with sensibilities, yes, it could give rise to that. It's got to be causing some damage. So just the fact that it's leaking onto your property may not cause damage.

HANSEN: All right. So say they're trying to be-- have conservation principles on their land and they don't want any of that on there because they're-- they believe on nothing growing on that land and so then, they have some of that going on with their land that might affect their ability to, you know, their conservation of the land. Would that be it-- like recourse, too?

JONATHAN URBOM: I don't know if that would be, under the current nuisance laws. I think that could be-- I think that could fall under different types of actions. For example, it might not be trespassing, but there's probably something similar to that or there are cases where, basically, you can bring cases for damages if your property is being damaged by something like that. It doesn't have to be under the nuisance umbrella.

HANSEN: Some-- because somebody brought up earlier about you have to be a private owner or you have to have a lot of money in order to do some-- I just have a concern. Is it possible Bill Gates could come here? He's buying up a lot of land-- the state of Nebraska use

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nuisance laws to stop agricultural farming or livestock in the state of Nebraska?

JONATHAN URBOM: I think the possibility of that is so remote that I don't think that there's ever a chance that that would happen. First of all, Bill Gates would have to buy a property and then Bill Gates would have to be here and show that he suffered actual physical discomfort according to what an ordinary person would feel based on their sensibilities, in order to file a nuisance action under current Nebraska law.

HANSEN: OK. I'm gonna take your word for it, so. All right. Thank you. Appreciate it.

JONATHAN URBOM: Absolutely.

HALLORAN: Thank you. Senator Hansen. Additional questions? Senator Raybould.

RAYBOULD: Yes. Thank you, Mr. Urbom, for coming here. So I don't know if somebody had handed out this article about neighbors suing over pig fumes per right to farm push. And so, just having briefly read through some of it, it seems like what is precipitating all this is trying to be a preemptive legal action because there was a, a pretty substantial settlement from-- not sure what of-- what the pigs all did. But, you know, it was a substantial \$94 million lawsuit. And so, I think you'd said it in your remarks about how difficult it is to prove a nuisance issue, but this, LB662, would make it extraordinarily difficult. And I think it's probably something to do with some of the other events going on around other states.

JONATHAN URBOM: I believe that if LB662 becomes law in Nebraska, that ag operations will essentially have immunity from nuisance claims. There are so many criteria that you have to meet just to have standing to bring the lawsuit. And even if you meet those, you still have to prove that there is a material violation of some applicable statute, ordinance or regulation. Even if you can do all that, if the ag operation proves that they materially complied with the regulation, statute or ordinance that you claim was materially violated, they are no longer liable. And material compliance is a scary term because that's like horseshoes and hand grenades. It's just we got close enough, right? Even if we violated this ordinance or statute, we were close, so sorry. We're not obligated to do anything.

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RAYBOULD: All right. Thank you very much.

JONATHAN URBOM: Thank you, Senator Raybould.

HALLORAN: Thank you, Senator Raybould. Additional questions?

IBACH: I'll ask one.

HALLORAN: Senator Ibach.

IBACH: A short one. Thank you, Mr. Chairman. First of all, you singled out my county except for Hayes County or my district, besides Hayes County.

JONATHAN URBOM: I missed Hayes. I apologize.

IBACH: I'm just glad I knew it. So could you speak just a little bit to the zoning piece of this whole thing? Because I know Jessica mentioned it earlier, but--

JONATHAN URBOM: I-- oh, sorry.

IBACH: --but I'm interested in your opinion on, on the zoning piece, because I know all the county commissioners create their own zoning laws and setbacks. And-- but I'm interested in your opinion on how those would apply.

JONATHAN URBOM: I am going to have to defer to someone back here that I know is much more-- much better suited to answer that question. In fact, he's a professor at the University College of Law and teaches people about that. So I think he would be your best option to answer that question.

IBACH: Great. Thank you very much.

JONATHAN URBOM: Thank you,

IBACH: Thank you, Mr. Chairman.

HALLORAN: OK. Thank you, Senator Ibach. Thank you, Mr. Urbom if-- for your testimony. I appreciate it.

JONATHAN URBOM: Thank you.

HALLORAN: Next opponent to LB662. Good afternoon.

JANIS HOWLETT: Hello. My name's Janis Howlett, J-a-n-i-s H-o-w-l-e-t-t. I live 0.6 of a mile south of four chicken barns or this CAFOs. And I just wanted to express that I'm in opposition to this LB662 for many reasons: road conditions, nitrates in the water, water table running low, the devaluation of property, homes becoming unlivable and particulates in the air that could cause you to be ill. I'm just going to leave that because everybody back here has-- talks on that. Right now, everybody's concerned about China and its spying, but have you guys really thought about China's takeover of Nebraska? When we attended the Lincoln-Lancaster Planning Commission meetings for the Costco-LPP CAFOs, we were told two things. Costco is building the chicken CAFOs and the processing plant to feed the Chinese people and that was told us several times. We were promised everything was being done by the book and if there was a problem, we always had the nuisance law-- nuisance laws to fall back on. Well, LB662 protects the multimillion dollar-- billion dollar corporate livestock producers like Smithfield and Costco and LPP. Smithfield is owned by the Chinese and per Costco, they're feeding the Chinese. So how long until Costco-LPP is bought by the Chinese, just like Farmland Foods? We fought the LB227 nuisance law in 2019 and there was an agreement made, reduced the amount of time. But now it's back in '23 and LB662 is-- has worse wording. It threatens the local control and undercuts the family farmer. How about thinking about this local family farmer that's surrounded by a large hog CAFO and several sets of chicken CAFOs that are owned by an out-of-state entity-investor? The family farmer has lived and farmed there for several generations. What about his fundamental rights? Would you like to buy his home for some good country living and deal with that manure and dead chicken odor, dust, noise, flies, traffic and the-- how about the neighbors that kill the grapes or the pear trees? Dicamba floats a long ways. It kills gardens. Maybe this farmer's younger family would have continued farming, but who wants to deal with the factory farm nightmare? What happened to the good life and being a good neighbor in Nebraska? And I was-- found out that there is LB63 [SIC - LB662], this focusing on my Chinese comment. So.

HALLORAN: OK. Thank you, Ms. Howlett, for your testimony. Any questions from the committee?

JANIS HOWLETT: Probably not.

HALLORAN: Seeing none, thank you so much. Next testifier. Good afternoon and welcome.

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JOHN HANSEN: Chairman Halloran, members of the Ag Committee, for the record, my name is John Hansen, J-o-h-n, Hansen, H-a-n-s-e-n. I'm the president of Nebraska Farmers Union. If my math is right, I have been working on planning and zoning issues for about 48 years. I helped bring planning and zoning to Madison County. We've helped, as an organization, a lot of the counties in the state of Nebraska develop planning and zoning. It is an important part of this question as we think about this bill. I have data that says-- that's been put together that if we just look at three counties and we look at Butler and Saunders and Platte counties, that if you look at who is being protected here-- and this bill is a Costco bill. And so if you look at the Costco operations, we have 6,840,000 birds in those three counties that are owned by companies that are not Nebraska companies. It is an out-of-state company that owns it. This was not Sis and Bub coming back to the farm. This was an outside outfit who came into our state. And so if you compare that in the same three counties, the folks that are, are farmers who put up barns is, compared to 6,840,000 (birds), 2,175,000 (birds). So it's important to remember, in this nuisance bill, which goes hand in hand with good planning and zoning, that we-- that these outside companies have come into our counties that did not have planning and zoning and they have-- that is, that, that is where the bulk of them are. And so, who was here first? Well, local residents were here first. Local family farmers, folks in the rural community. They were here first. So they come in-- these outfits come in and Costco says, we're going to be different than all the rest of the poultry processors. We're going to treat everybody better. We're going to get better contracts and we're going to be a different kind of company. And so now, here they are, coming in and saying we're-- first of all, they've done what they said they weren't going to do, which is to use outside investors to be able to build the barns and then hire folks to staff them and run them. Right. So that's you know, so they didn't keep their word on that part of it. And so then they come in and say, all right, relative to nuisance, we're going to change the, the compromise, which was a hard fought compromise in 2019, between all of the different interests. We're going to, we're going to set up a "can't get there from here" roadmap for how it is that you get standing in order to have any kind of remedy that amounts to anything at all. So the private property rights and the quality of life of the local folks will now be off the table if you're, if you're not a majority landowner. My LLC would have no standing because we're all equal owners. So half a mile-- I've done service work for a very long time and there have been a lot of successful lawsuits brought from damages that were far in excess of a half a mile because of

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direct damages where people could not live in their own homes, could not have barbecues, could not hang their clothes outside. Their quality of life was substantially reduced. And there were settlements made because of that. So what this law does is it is in fact, a solution in search of a problem. There have been no nuisance lawsuits. The boogeyman, outside folks coming in is standard fare, it's been with this for many, many years. And with that, my red light is on.

HALLORAN: Thank you, Mr. Hansen. I'm glad you're not color blind.

JOHN HANSEN: Well, I'm a little color blind. Ask my wife.

HALLORAN: Any questions, any questions from the committee? OK. Seeing none, thanks for your testimony.

JOHN HANSEN: Thank you.

HALLORAN: Good afternoon and welcome.

SUSANNE HAAS: Good afternoon. Thank you.

RICK LEONARD: It's a pretty good baby.

SUSANNE HAAS: Well, he's five weeks old, so this was a stretch to get here, but I felt like it was very important for me to be here. My name is Susanne Haas. It's S-u-s-a-n-n-e H-a-a-s. I clearly oppose LB662. When the Costco chicken operations first came to Washington County, we were warned that activists were coming who opposed the barns. I wondered where the activists were coming from and who they were. And then I went to a meeting at my neighbor's farm and the activists were elderly farmers in their bib overalls and moms like me, taxpaying, good rural neighbors who had lived on our farms for generations. Then I went to the planning committee meeting, which was deciding the conditional use permits for Costco barns. It was standing room only. Hundreds of people opposed. My rural neighbors were forced to gather on the lawn of the courthouse, because there were so many of us we couldn't fit inside. In both situations, there was no activist to be seen anywhere. It's the genius of the Costco, a fan in we support agriculture marketing teams that it has become more apparent as time went on. I listened to expertly crafted speeches by selected growers about bringing kids back to the farm, foolproof nutrient management plans and the promise of no odor, despite millions of birds and a 3.5 percent mortality rate for each growing cycle. And that's approximately 80,000 chickens in open air compost piles. I see L bell-- excuse me, LB662 is the next step in this marketing campaign.

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When I first heard of the proposed amendments in the Right to Farm bill in 2019, as an attorney, I was perplexed. I researched why changes were needed. I was only able to find a handful of lawsuits that were brought under the original bill, enacted in 1982. The 2019 changes and this attempted amendment only create more questions of what the above entities know that we don't, that is necessitating them to take evasive action against future nuisance lawsuits. I encourage transparent-- transparency and call this amendment what it really is: nuisance protection for corporate vertical integrators at the expense of taxpayers' private property rights. I am a proud member of a family who homesteaded here in 1873. We have had Nebraska soil in our hands ever since. I grew up on the fenders of tractors, helping my dad and grandpa, showing livestock at the county fair. I've pitched my fair share of chicken manure and I've stacked hay. God willing, my kids, including him, our seventh generation, will be able to do the same. For 150 years, my family has farmed and raised livestock. In that time, the county landscape has changed. Most recently, we had a housing development that was built to our west. And at my grandpa's funeral, the thing that was said repeatedly was he was a good neighbor. And that is why I cannot understand the intent behind this legislation. LB662 does not protect my farming family. It protects industrial interests like Costco. My family had ample protection under the original Right to Farm Act and the continued amendments are gutting the intent of that bill. As I mentioned, Costco came to our county and the CAFO proposed was within 200 feet of our farm's southern property line. And by the way, we did not receive notice, as was testified to earlier. We saw a sign in the middle of the field. That's how we knew it was coming. It was an eight-barn complex and it would have housed 2.25 million broiler chickens a year. And what was scary to our family was not the housing development to our west, but the CAFO and what it would do to our quality of life, enjoyment and use of our property, our health and our property value. Where we live, water is an issue and according to the information provided to us, the chicken barns would have used 160 gallons per minute of water during peak season. Our aquifer has six feet of usable water. Our neighbors had tried to drill and they were unsuccessful. The average water use for Costco would be 20 gallons per minute, with 7.8 million gallons used per year. That's the same equivalent of Fort Calhoun, which is a town of 1,100 people. I bring this up and I'm sorry I'm out of time, but the reason I brought that up is because if they drained our wells, under this bill, we would have no recourse. I'm open to any questions. Thank you for having us today.

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HALLORAN: Thank you, Ms., Ms. Haas. I think you win the award for having the youngest testifier assistant.

SUSANNE HAAS: Thank goodness he stayed asleep.

HALLORAN: Questions from the committee? Senator Holdcroft.

HOLDCROFT: Thank you, Chairman. Would you like to finish reading your paragraph?

SUSANNE HAAS: Oh, I would love to. Thank you. I appreciate that. After a year left us without any water on our property, there would be no legal recourse. Even with the best of intentions, if they followed our nutrient management plan, things do happen. And that's why we have legislation to protect people and their property. Imagine, if you will, that legislation was passed that allowed drivers of red cars to have no liability for accidents or injuries, as long as they were not speeding. Any rational person would know that's ridiculous. But yet here we are. We're applying the same rationale to farmers and their corporate neighbors. The changes that are attempting to be made under the guise of Right to Farm are a brilliant marketing tactic. Unfortunately, this is the corporate takeover of Nebraska's greatest asset, the individual family farmer. I urge you to think of those families that have built and sustained this great state when you're voting on this disastrous legislation. I'm asking you to protect people like my farming family.

HOLDCROFT: Thank you.

HALLORAN: Thank you, Senator Holdcroft. Additional questions from the committee? Thanks for being here. Thanks for bringing your son.

SUSANNE HAAS: Thank you. I appreciate it.

HALLORAN: Good afternoon and welcome.

ANDREW TONNIES: My name is Andrew Tonnies, A-n-d-r-e-w T-o-n-n-i-e-s. I live outside North Bend. And I am here today to testify in opposition to LB662, how there is a narrative out there that people who oppose this legislation are out-of-state agitators and environmental activists. So let me tell you a little about myself. I was born in Nebraska and have lived here nearly my entire life. My wife and I are raising our two kids on a farm outside of North Bend. We attend church. I'm a member of Pheasants Forever. I'm a Freemason. I'm a specialty livestock, livestock producer. I'm an FFA alumni. I

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learned how to work hard on a hog farm while I was in high school. I am not some outside activist from the coasts and I believe in treating your neighbors the way you wish to be treated. I believe most people in rural communities feel the same way and that is why there is no onslaught of frivolous lawsuits pertaining to nuisance complaints. People want to work things out between themselves when they can. But it is important that an avenue of recourse is available for when neighborly relations break down. This bill would favor one neighbor, even a farm that is owned out of state, over a neighbor like me, a fifth generation Nebraskan. I'm not trying to put anyone out of business. I'm standing up for my rights as a resident of rural Nebraska and a property owner. LB662 unnecessarily revisits an issue where a compromise was reached only a few years ago and I ask the committee to move past the talking points they've heard in support. The majority of rural residents are not asking for this and they do not support it. Thank you for your time.

HALLORAN: Thank you, Andrew, Any questions from the committee? Seeing none, appreciate it. Thank you. Good afternoon.

AMY SVOBODA: Good afternoon. My name is Amy Svoboda, A-m-y S-v-o-b-o-d-a. I currently live in Lincoln. I'm a-- I'm an attorney. And the first part of my law practice was enforcing environmental laws for the federal government. Second part of my practice has been representing rural farmers, ranchers and residents in mostly environmental actions. I'm going to follow, for the most part, the proposed amendments in the order in which they, they are in the amendments. And the first one has been talked about a lot, the agri-- you can't bring a nuisance action if the agriculture, agriculture operation has materially violated federal, state or local law applicable, applicable, applicable to agricultural operation. Now, it's true that, that the word material-- materially violated is, you know, very vague, unenforceable. But secondly and more important, as a federal enforcement attorney, to figure out whether a facility and a farming agricultural facility has violated a federal or state law is, is something that can take months. It can take special equipment. It's not something that, you know, an every person can really decide and they don't-- and an every person doesn't have the, the, the money or the capability to do the kind of testing that's needed, so that, that makes it basically inoperable. But what I want to say even more, in Nebraska, we are not as well-developed in terms of our laws to protect the health and welfare of our, of our, our people as other states are. Now, if this was a law that was coming in to, proposed, rather, in maybe Iowa or Michigan where they are more, more developed, for

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example, we don't have odor regulations for livestock waste facilities or livestock facilities-- confinement facilities. And we don't have regulations involving flies and, and dust that come off those facilities. We don't have regulations having to do with noise and that sounds like a small thing. Some-- that's, that's not quite accurate. Some cities do have noise regulations, but some of them, you know, some-- there is a lot of noise that's involved in some of these large elevators in the small towns, which cause a whole lot of problem for the residents. And these are, these are-- I'll talk about that a little bit later. So basically that-- the main provision of this, of this law shows that there's-- I mean, there's gaps in our law and that's exactly what nuisance lawsuits are made to, to cover, basically, that which there is not a remedy at law. That's-- you use the nuisance common law method of, of bringing an action. If you go to, to 2(b) of the proposed amendments, it talks about agricultural operations conducted in manent [SIC] consident [SIC] with acceptedly-- agricultural-- accepted agricultural practices. Well, as a farmer, I spray dicamba sometimes on my soybeans. That can damage-- in other farm-- farmsteads or other farm properties. I should pay for that. I shouldn't be immune from that. And-- but that's-- but it-- that is what is general-- it's not prohibited by law to do that, state, federal or local. And then finally, I want to talk about-- because this is special, because my case was cited and Urbom remembered my case-- and that the co-op in a small town in which my elderly, my elderly clients brought a suit against this small co-op. And they'd lived there for all their married life. And the co-op, what they had done, they had provision-- relating to provision (iv) of (b), they have employed new technology. Suddenly, they used big fans, big noisy fans. And my clients could not go outside in the day and enjoy it, they couldn't sleep at night and so that's an example, another example of a flaw in the regulations here. If there's new technology that causes problems that there aren't any state law or local regulations, which there aren't in noise, there should be ability to take a nuisance, nuisance action. Thank you.

HALLORAN: OK. Thank you, Mr. Svoboda. Are there questions from the committee?OK. See-- yes. Senator Raybould.

RAYBOULD: Thank you, Ms. Svoboda. Were there any other elements of the bill that you had wanted to, to point out that you--

AMY SVOBODA: Yeah, there was the last one. Well, the last one having to do with the, the one year-- limiting the statute of limitations to one year. And, and I-- I'll kind of echo a lot of what other people

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have said, in terms of that's too short. But also, the provision, I mean the, the, the description of after the condition, which is the subject matter of the suit, reaches a level of offense sufficient to sustain a claim of nuisance-- come on. You know, that's something that would, you know, you'd be in, you'd be in the courtroom a day trying to, trying to describe that it was, you know, the offense was sufficient to claim-- to sustain a claim of nuisance. That's not an easy standard on-- in terms of, of the statute of limitations. So, I mean, again, it's a real serious flaw in the understanding and operability of the law. Yeah.

RAYBOULD: I have one, one more question.

HALLORAN: Sure.

AMY SVOBODA: Have you seen other pieces of legislation similar to this in other states?

AMY SVOBODA: Well, I know that there are, but other-- but the other-- I mean, this is probably taken from another state because it doesn't really fit, as I described, Nebraska.

RAYBOULD: OK. Thank you.

HALLORAN: Thank you, Senator Raybould. Any further questions from the committee? Thank you for your testimony. Additional opponents to LB662. Good afternoon and welcome.

HELEN GREER: Good afternoon. Thank you for allowing all of us to testify, Agricultural Senators. I am the Reverend Helen L. Greer, also known as Penny. That was a name given me at birth, as well as my legal name. I live at 1716-- I'm sorry. H-e-l-e-n G-r-e-e-r; 1716 Trelawney Drive, Lincoln. I'm an ordained minister in the United Church of Christ and I'm also the board president of Nebraska Interfaith Power and Light and we stand opposed to this bill. What I want to do today, why I wore my collar, is that I would like to stand on a different perch to look at matters in a different light. As a faith leader, I come to this issue with some of the most powerful scripture in the Bible, in my head and in my heart. For Jews and for Christians, our creation story tells us that we are people of the earth, created of the dust of the earth. We are first set in a garden that is beautiful, where we will have enough to eat and others will also be able to eat. Our responsibility from the start is to till it and keep it. That's the exact language in most translations of Genesis 2:15. We are meant

to work the Earth, to produce our food, to take delight in it, but also to keep it, to preserve it for ourselves, for generations that follow, to safeguard it from harm, all sharing in God's work. That's the org-- that's the entire organization of Genesis, that Jews interpret as well as Christians. For indeed, words that always resonate with me and perhaps with many of you as well. The Earth is God's. The Earth is the eternal one's, the world and those who dwell therein. I find that so powerful. It is the first portion of the 24th Psalm. For indeed, people of faith know ultimately, the earth is not ours. It is God's. And for Jews and Christians, we are stewards, individuals who have been given responsibility for the management and service of something belonging to another. And to speak more directly for Christians as I am one, the steward is a prominent feature of many of Jesus' parables: someone who makes wise decisions in managing the land and all of its benefits before the master returns. LB662 does not just affect the livelihood, joy and hope that a farm's nearby neighbors have a right to experience, as so many have spoken of today, as protected by our laws and the two constitutions that governs-- our state and the federal Constitution. It affects our responsibility as a keeper of the land, land that does not ultimately belong to us, regardless of the way our laws have been written. Last week, I heard a troubling lecture given by Dr. Eleanor Rogan from UNMC, that Mr. Leo, Leo referred to earlier. She and other scientists have been attempting to relate the alarming rise in pediatric cancers, especially brain and CNS tumors, to the presence of nitrates in Nebraska's waters. We are between fifth and seventh in the nation in all the different kinds of pediatric ailments; that may actually, actually be for one of these two cancers as well. I'm not sure. She and her fellow researchers have found a strong association between nitrates in the private well water drunk by some of Nebraska's rural families and those pediatric cancers. They've been documented, along with a number of other debilitating illnesses affecting more than children, pregnant women, adults, etcetera. Currently, the EPA allows 10 gallons per liter of nitrates in potable water. Some of the studies Rogan's team have reviewed have indicated levels less than 10 milligrams per liter have a high association with particular illnesses. The law, the policies that are all referred to in those supporting this law-- this, this particular bill are not keeping up with what we are learning and must act on. So if we are finding that farmers or people who live near various farming operations are founding-- finding higher nitrate levels and truly have experienced cancer, which might take more than a year to develop, based on the exposure. Obviously, any kind of lawsuit would hardly be considered frivolous for this kind of a reality. LB662

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would shut down yet another avenue for safeguarding land that I would suggest all of us, regardless of our faith or orientation, have a responsibility to keep. I just find that metaphor so powerful and I want to think about it and help others to think about it, too. To protect from contaminants that pollute drinking water and destroy life; to enable all of the land be passed on, beautiful and intact, to future generations. I strongly urge you not to approve LB662. Thank you for listening.

HALLORAN: Thank you Reverend Greer. Questions from the committee? Senator Riepe.

RIEPE: Thank you, Chairman. I've been in the health business a long time from an administrative side, and the issue of alarming-- of pediatric cancers, particularly in-- around the Grand Island area, it's been there for 10 or 15 years. And so, I'm struggling-- correct me here. I'm struggling to connect it with this particular piece of legislation. It seems like it's a problem that--

HELEN GREER: Sure.

RIEPE: --it's real long before we ever talked about right to farm or the problems and we seem to have not solved them.

HELEN GREER: OK. Well, she and her researchers are trying to correlate it with various practices. There, there-- they tried to correlate it with actual farming operations and then crops that are actually filled, that are actually planted. And then they also were looking at various watershed data. It's, it's a tough-- all she can do is talk about an association. So obviously, I don't know if a nuisance lawsuit would be, would be appropriate for a family with a child with pediatric cancer. And certainly, it would have taken much longer to develop than one year or even two years.

RIEPE: It sounds like it's intergenerational research, you know. That's been going on a long, long time.

HELEN GREER: Well, her group is really trying to pinpoint things more specifically. And, and she has-- they're beginning to publish material, to, to integrate a lot of material. They're not just looking at nitrates, they're also looking at atrazine.

RIEPE: I'm just trying to connect it with this--

HELEN GREER: Sure.

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RIEPE: --particular bill.

HELEN GREER: Well, she, she just-- I see it as a possible nuisance lawsuit and unfortunately, that would not be possible-- easily, for a child to develop cancer and, and the family need to have recourse.

RIEPE: OK. Thank you.

HELEN GREER: Thank you.

HALLORAN: Thank you, Senator Riepe. Any further questions?

HELEN GREER: Thank you--

HALLORAN: All right. Thank you for your testimony.

HELEN GREER: --for the time. I appreciate it.

HALLORAN: Good afternoon.

NANCY MEYER: Hello. Good afternoon. My name is Nancy Meyer, N-a-n-c-y M-e-y-e-r. I live in a rural area of Saunders County, so LB662 is, is very personal to me. My husband grew up in Nebraska and more than 20 years ago, he convinced me to drop my career and move our young family across the country to a home in the middle of Nebraska cornfields. Having grown up in Indiana, I was reluctant, but I soon learned to love the Nebraska countryside: the clear, clean air, the delicious water from our well and the wonderful, exquisite quiet. I remember hanging up wind chimes on the porch when we moved in and I took them down the next day because they intruded on my solitude. We came back to Nebraska for the good life and some of the most important values embodied in the good life for Nebraskans are property rights, local control, keeping our families together and prioritizing Nebraska businesses over outside interests. These values are all threatened by LB662. Trucks from CAFOs now pass through our county regularly and more and more threats to our water seem to pop up daily. We've had to install a reverse osmosis system because our water is no longer pure. We are used to the occasional smell of cow manure from the herd that our neighbor turns out into his cornfields after harvest each fall. But now, we're subjected to eye-burning stench from chicken manure spread without even being knifed in. Because of these menaces, now, my husband, a born and raised Nebraska farm boy, wants to move out of state. We don't want to be trapped living around multiple health risks on property that's value is diminished by the actions of others. LB662 removes the property's owner's right to the peaceful use and quiet

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enjoyment of their own property. Why on earth do we want to take property rights away from Nebraska citizens? This bill will actually limit housing and other development, impeding growth and economic opportunity right where it most often occurs, which is on the outskirts of our cities and small towns. LB662 is an attack on local control, restricting what municipalities and other agencies can do to make their areas livable and inviting to young families whose parents would like to see them stay in Nebraska. I'm a big fan of local control. I've served on-- elected positions, on school board and on my NRD. In fact, I believe more policy ought to be enacted that preserves the rights of local residents, not limits them. Finally, this bill will make Nebraska irresistibly attractive to out-of-state and foreign interests who wish to invest in nuisance-creating agricultural operations that are protected from legal liability and located as far as possible from their own homes and shores. This isn't just anti-Nebraskan, that's anti-American. More than two-thirds of Nebraskans live outside the Omaha and Lincoln metropolitan areas or on the edges of those cities. And I urge you to consider the majority of your constituents in this state and reject LB662. And since I have a little more time, I'd like to point out that, as Ms. Kolterman testified earlier, it's meant to prevent frivolous lawsuits. And I believe Senator Ballard mentioned this, too, but it's worded to prevent all lawsuits. OK. The word frivolous isn't even in the bill. So if a lawsuit is frivolous, then, you know, it's going to be thrown out by the court. This is doing exactly the opposite and I don't think that's good for Nebraska. So, thank you.

HALLORAN: Thank you. Ms. Meyer. Questions from the committee? Seeing none, thanks for your testimony.

NANCY MEYER: Thank you.

HALLORAN: Good afternoon and welcome.

MARINA BARRETT: Hello. My name is-- I'm against it. My name is Marina, M-a-r-i-n-a Barrett, B-a-r-r-e-t-t. I've lived at my acreage at 12501 West Wittstruck in Lancaster County for 22 years. I reside at-- reside 0.6 miles from the recently constructed chicken broiler grown building in Lancaster County. These broiler buildings will produce birds in-- for Lincoln Premium Poultry and Costco. These barns are very long and they can be seen a mile away. They're a sore eye from the roads. Many homeowners nearby are presented and have established property rights before Randy Essink purchased adjacent property for the sole purpose of building the poultry CAFOs. In fact, Randy Essinks [SIC lived in

Gage County and lived on an acreage. However, Gage County protected, protected their residents by not allowing the CAFOs one and a half miles within a home. This is why Randy Essinks [SIC] is in Lancaster counties, because at the time there were no setback laws. Lancaster Hills Alliance is the group that stopped-- actually put into law and fought for setback laws, for which we have now. And this is a good example, showing when the liberalized-- lized laws for CAFOs can be-- can expect more CAFOs in our community. This LB662 tramples and suppresses my property rights and the property rights of other owners within a two-mile radius. This legislation gives this newly arrived property owner the ability to modify the existing conditions, as a result, will impact each of our daily lives. The odors, the dust and the flies will significantly reduce the enjoyment of my property. The animal carcasses that will not be in a closed building will a-- attract animals and flood the area. This CAFO facility will reduce my property value. Even the perception of the CAFOs near home dwellings reduce property values. However, the permit of the buildings were continue-- contentiously fought and the permit was approved, approved in 2019. The County Board of Commissioners opinion, opinion that the producers claim that the frequency of the ob-- objectability odor, based on the UNL odor print tool, should be allowed and move forward based on the testimonies of the producers and Lincoln Premium Poultry, Poultry, whose claims were that there would not be an impact, an adjacent property-- to an adjacent property owners. Obviously, the testimony was self-serving and in the personal and financial interests of the owners seeking permit approval. Now my recourse is when these broiler producers begin the nuisance activity to take legal action and to stop the nuisance, but LB662 would prevent me from doing that. I served 23 years in the Army, as enlisted and then as an officer for this county. I then served for the veterans of-- Department of Veterans Affairs for Veterans and now I have to deal with the state in taking my right to protect my property that I own outright. Why should this newly arrived person, Randy Essink, and a newly acquainted [SIC] property have the rights over me, that I was there first? There's people there that's been there 30 years or even 40 years. This makes no sense, but LB662 would do exactly that. It would prevent me, the longstanding citizen, from taking legal action to stop Randy Essex [SIC] from polluting the environment and causing a nuisance to me and the property owners in the area. LB has-- LB662 has the gall to refer to me as the nuisance when Randy Essence [SIC] is a Gage county residents, to move into my neighborhood, build barns, he'll grow birds, then who is really the nuisance? The poorly behaving neighborhood that creates the, the odor, the flies, the dust and the

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carcasses? It's not us, it's them. I only have one question for you guys to think about, is why would you need LB662 in my situation, unless there are issues with the CAFOs moving too close to people. You wouldn't need this law if there were no issues. And I have a picture of-- on the back of it where the barns are. And I just wanted to say that Jessica Kolterman had sat here in front of you, saying that they wanted you to have trees to cover it. You see any trees covering it? You don't. And at the Lancaster Commissions that we were at, two of them, I'm sorry, I don't remember her name. She flat out said she drove out there to this site and said all the trees are going to cover the buildings. You don't see any trees covering the buildings, at all. And I--

HALLORAN: Ms. Barrett, there, there likely be-- may be questions, but we have a time [INAUDIBLE].

MARINA BARRETT: I'm sorry. I just, I just want you to put yourself, your shoes in our place that if you own a house, how would you like it?

HALLORAN: OK. Are there questions from the committee? Senator Riepe.

MARINA BARRETT: Yes, sir.

RIEPE: Thank you for being here. The question that I have is, at the time, you say you lived 1.6 miles down from the, the chicken house, if you will. Did you formally resist the chicken ban at that time when you had the opportunity to resist it and if so, what was the outcome of that? Did you take legal action or did you file anything or?

MARINA BARRETT: Oh, we fought, down at the court.

RIEPE: Unsuccessfully, evidently.

MARINA BARRETT: Oh, yeah. We, we fought at the court, I mean at the, the county and they, they still built the, the barns.

RIEPE: So they listened to your comment and then went ahead anyway?

MARINA BARRETT: Yeah. Lancaster Hills Alliance was established and Jessica Kolterman just sat in front of you today and said that everybody was notified in the area, when not one person was notified. They talk out of both sides of their mouth. I'm a black and white person and I'm an honest person. If you're going to notify me, notify

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me. And every one of the neighbors said, were you notified? Where's the piece of paper? Nobody notified us.

RIEPE: OK.

MARINA BARRETT: In fact, they notified us about the court date or, you know, the hearing, after it was supposed to be and then they had to reschedule it because they didn't notify us.

RIEPE: OK. That answers my question. Thank you. Thank you for being here.

MARINA BARRETT: Thank you.

RIEPE: Thank you, Mr. Chairman.

MARINA BARRETT: Thank you.

HALLORAN: Any further questions? Seeing none, thanks for your testimony. Good afternoon and welcome.

AL DAVIS: Good afternoon. You've all had a long day and I'll try to be brief as I can. Al Davis with the Independent Cattlemen of Nebraska and also with the Nebraska Chapter of the Sierra Club, here today to speak in opposition to this bill. First of all, I just want to say, we had one proponent for this bill and I don't know how many we-- opponents we have, but it's overwhelming to me the opposition to the bill, so I hope that you'll take that into consideration when we go forward from here. Ms. Svoboda made a reference to the phrase "materially violated", which I tried to find a definition for and could never find it. I hate the thing-- I hate legislation that's vague because vague legislation always ends up resulting in court situations. And so, you know, if, if this bill is going to go anywhere, that needs to be straightened out. So this bill, it causes further erosion in local control by greatly diminishing the rights of neighboring landowners when a con-- concentrated and agricultural feeding operation or CAFO is established. LB662 is an attempt by the proponents of the bill to radically change the actions taken in '19, 2019, only a few years ago, when current standards were put in place, essentially revoking compromises made at the time and cutting in half the protections that neighbors have to protect themselves from CAFOs and their associated problems. Ironically, this bill is called the right to farm bill, but the language in the bill strikes the word farm entirely and inserts the phrase agricultural operation. That's why I said to me, that puts the light of the operation-- operators calling

themselves farmers. This follows on efforts in 2015, when I was sitting in your chairs, when the state-- when entities came in and tried to impose a matrix on the state to take away all the decision-making by local officials and impose this from the top. And this was all presented in an argument, we have to do these things in order to get agriculture-- big, big agriculture into our state. So that was a long, drawn out process and it became a voluntary matrix. So then, some years later we had another assault on this. Now here we are, back again. It looks to me like it's profit at the expense of everything else, led by an out-of-state entity like Costco, basically. They don't live in Nebraska. Most of the barns are owned by someone else. So LB662 also has a significant impact on cities, villages, natural resource districts and state parks, as well as local businesses and neighboring farms and ranches if fully implemented. So just think about that. If someone put a CAFO and this bill was passed, within half a mile of or within three-quarters of a mile away from Mahoney State Park and it was a big one and, and a lot of odor went through, there was nothing the state could do about that. It's just something I think you should think about. Odors can permeate as far away as seven miles, with a common distance of three miles, according to an Ohio, Ohio study by the National Association of the Local Board of Health. A powerful stench will drive away visitors and make living close to a CAFO a very unpleasant experience and you can ask anyone who has done so. As the residents of-- ask the residents of Mead how they felt about the stench associated with the AltEn ethanol plant, which is two miles away from the village. You heard about how the building diminishes the, the rights of minority property owners. I think that's a huge concern. The example I used in my testimony was, you know, a farm is owned by three different individuals. One of them lives in the house and the other two don't, so they can't sue. They have no rights. So let me be perfectly clear about the Independent Cattlemen of Nebraska role here. We are firm believers in property rights. They strongly believe in rules and regulations which compromise their ability to use their land as they see fit. However, ICON members also believe that CAFOs make a significant change in how a farm or ranch is traditionally operated and can impose odor, insect dust and traffic on formerly pristine neighboring properties. So we're-- we think that the rules that are in place are sufficient today. CAFOs also contribute to groundwater contamination pollution. I see I'm out of time, so I'll just wrap it up and just say that this bill takes all the power away from the individual and puts all the power into the hands of these CAFOs. It's very expensive to sue and

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almost impossible. Thank you, Senators, for your time. I appreciate your listening very closely.

HALLORAN: Thank you. Mr. Davis. Any questions from the committee? Seeing none, thanks for your testimony.

AL DAVIS: Thank you.

HALLORAN: Good afternoon.

KENNETH WINSTON: Good afternoon. My name is Kenneth Winston, K-e-n-n-e-t-h W-i-n-s-t-o-n, and I'm appearing on behalf of the Bold Alliance in opposition to LB662. Good afternoon, Chairman Halloran and members of the Agricultural Committee. The Bold Alliance works to protect land, air and water from pollution, as well as protecting fundamental American rights to own property. We work with farmers and ranchers to protect their property rights. We support the protection of private property rights guaranteed by the Constitutions of the United States and the state of Nebraska. One of the main reasons we are opposed to LB662 is, as Mr. Urbom indicated, it's already very difficult to, to, to file a lawsuit, to win a lawsuit based upon nuisance. In order to win a lawsuit based on nuisance, you need to prove unreasonable interference with their quality of life. Here's some examples of why we're concerned about LB662. It creates substantial barriers to the filing of a claim. You can't even get into court based upon LB662, against a business or other operation that's causing unreasonable interference with a person's quality of life. First of all, it would prevent claims that would be made by anybody who lives more than one-half mile from the operation, even though things like odors, insects and dust can travel far more than half a mile. As Mr. Davis indicated, odors often travel three, four, five, seven-- or up to seven miles and it can be very unpleasant. Preventing-- secondly, preventing claims from anyone who isn't a majority owner, preventing tenants and minority owners from protecting their interests. Preventing-- third, preventing claims that the operation hasn't been found, found in violation of laws or regulations. And as was previously indicated, that's a very nebulous standard. And, and they use the term material violation. And what is a material violation? It would have to be proved in court, probably could be found unconstitutionally vague for-- void for vagueness. And the other thing about that is that there's-- some of the things that can be a basis for a nuisance lawsuit are not subject to, to regulation. There are no regulations about odor or-- and many of the other issues. There aren't specific regulations related to things

like, like insects, the number of flies that might be found on your property. So here's some specific examples of how it could cause harm. Well, there's rural-- imagine rural businesses, which depend upon attracting people to outdoor activities such as farm wineries or I mean, I-- one of my favorite summer activities is going out to a farm winery on a, on a Friday aft-- Friday evening and listening to some music. And I don't think I'd want to do that if, if the place was overwhelmed with a stench. And I think that'd probably put farm winery out of business if they couldn't attract people to their operation or if a person had agritourism on their property. So that would make it hard to protect their interests from unreasonable interference. Then, as Mr. Davis said, public entities that, that have outdoor activities and imagine going to a football game on a Friday night and, and being overwhelmed with the stench of, of a, of a nearby activity. That would be the kind of thing that would make you not want to go to that football game and-- but the school couldn't file a lawsuit based upon this bill. And then, I guess I also wanted to mention that there's probably some issues as to whether LB662 is unconstitutional because it prevents access to the courts. There's a provision, Article I, Section 13, of the Nebraska Constitution, it says people have a right to go to court. Then finally, it also prevents-- it probably violates property owners' rights to due process. If it reduced their property values, it would probably result in, in what's called a taking, in violation of the United States Constitution and the Nebraska Constitution. So for these reasons, Bold Alliance would, would respectfully request that LB662 be indefinitely postponed. Thank you.

HALLORAN: Thank you, Mr. Winston. Questions? Senator Riepe.

RIEPE: Thank you, Chairman. In another committee, we are looking and talking about workers comp and coverage for mental stress. And my question would be, is would the claim for mental stress or mental illness be a potential claim that someone would-- it's not a nuisance, it's-- but they could claim that it's caused them mental illness.

KENNETH WINSTON: Well, as I believe they-- Mr. Urbom talked about this earlier, but it's my understanding that the standard requires actual physical-- you have to be physically impacted in order to be-- to file-- to be successful with a claim. Now, the physical impact could be the fact that you feel ill or nauseated by the, by the smell or the fact that, that there are flies. I recall a nuisance lawsuit where the-- specifically, the issue was the fact that the entire house that the person lived in was covered-- the exterior was covered with flies and they described the number of flies per square inch on the, on the

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exterior of the house. Now, if it was a mental issue that, that was so severe that it caused physical harm so the person became physically ill, then, then I imagine there could be compensation, but, but according to-- my understanding, it requires a physical impact.

RIEPE: My reason for saying that is there, there was recently a story out in Virginia where parents, whose children were aware of the school violence and they were saying that they have just cause for legal action. So we're moving off into a new arena, more unknown than physical health. It's basically mental health.

KENNETH WINSTON: Well, not-- in Nebraska law, it's my understanding unless there's a physical impact, that--

RIEPE: OK.

KENNETH WINSTON: --that a person would, would not [INAUDIBLE].

RIEPE: I know. I'm just saying that there's legislation that's trying to come through that's talking about moving that from physical to include mental--

KENNETH WINSTON: Yeah. Yes. And, and I appreciate what you're saying.

RIEPE: --in worker's comp only right now, but that's like a, a virus. It can go from there to something else, so thank you very much.

KENNETH WINSTON: Yes. And, and, and I'm not trying to be argumentative, but just-- this is-- this would go the other way. This would prevent people from getting into court to make, to make claims.

RIEPE: OK. So I appreciate it. Thank you. [INAUDIBLE].

HALLORAN: Thank you, Senator Riepe. Any further questions? OK. Seeing none, thanks for your testimony.

KENNETH WINSTON: Thank you, Mr. Chairman.

HALLORAN: Welcome.

EDISON McDONALD: Hello. Hi, my name is Edison McDonald, E-d-i-s-o-n M-c-D-o-n-a-l-d, representing GC Resolve. We work with family farmers who are in transition. We work with communities to really ensure they can most enjoy the good life. I, I don't want to repeat too many of the points that we've heard today, but our opposition is grounded in a

number of those concerns. I think, you know, really ensuring that we are protecting real Nebraskans and real Nebraska family farms. We heard it over and over again, folks who've lived in Nebraska for a long time who are concerned about what the impact on them is going to be. You know, we talked about earlier also, we have gone through-- we've gone through this. We had LB227. We have had oh, so many individual county planning and zoning meetings and county board meetings, where each individual community has created something that really fits them. It fits their concerns, it fits the people in that community. And if we were to go and pursue this, we'd really just be undercutting all of those agreements we've previously had. So I want to talk about the, the key pieces of the bill and, and think about it as if I was some out-of-state entity that did want to go and stop a farm. So if you shift from two-year statute of limitations to a one-year statute of limitations, that doesn't really help. That doesn't really change if you're a big out-of-state entity. You're going to have more resources to be able to move more quickly. The second piece is the half-mile limit. Ultimately, you know, we heard today folks who were six-tenths of a mile, real Nebraskans who would be impacted. If I was an out-of-state big entity, I would go and say, let's, you know, figure out if I could buy some land within a half-mile circle; that, that seems kind of a, a wasteful idea. The third idea-- third piece is the 50 percent ownership, which Senator Ballard did acknowledge some issues with. And I just think about all those farmers out there and family farms like mine where I'll be the managing partner, but because of my sisters, I wouldn't have 50 percent-plus ownership, so I wouldn't be able to pursue a claim. So instead, I want to have us focus on, kind of, some positive solutions and really focus on building tools like buffer strips, cover cropping and creating a working runoff model to add to the matrix. As you see in the study that I've handed out, you can see both our, our research that has gone and recorded a number of issues, especially in those nitrates and in those significantly raising levels. And I just want to read real quick-- you know, I think part of the concern here is, you know, looking at what if you could-- what if you did have nitrate issues? Well, within our two-year statute of limitations, we don't have enough time to be able to actually assess this. This has taken five years of gathering data. And what we've gotten is that we've found that 80 percent of samples handled throughout the sample pool in eastern Nebraska had nitrate levels significantly above the EPA's safe level. And the second piece that I wanted to read-- for most of the study period, pathogens associated with poultry litter, [INAUDIBLE] and salmonella were absent. And importantly, the number of positive

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identifications from the most recent testing season doubled the total amount discovered throughout the entire course of the study and also aligned with the highest levels of phosphorus during the same period, which together, suggests a poultry-based addition. By this most recent season, Costco grow barns had been operational for over two years, which was the time lapse estimated before initial field applications began. Thus, it appears evident that the increased levels of nutrients and pathogens may be attributed to the Costco project. With that, I've got a red light, so I will take any questions.

HALLORAN: All right. Thank you, Mr. McDonald. Questions from the committee? Seeing none, thanks for your testimony. Additional testimony in opposition to LB662? Anyone in neutral capacity on LB662? Welcome.

ANTHONY SCHUTZ: Anthony Schutz, A-n-t-h-o-n-y S-c-h-u-t-z. I'm a law professor at the University of Nebraska. I am here in my personal capacity and not representing the University. Any views are mine alone, although informed by my, my expertise. I've been teaching agricultural law and land use law for about 16 years at the law school. The first article I ever wrote was about the right to farm statutes and the changes that we made. This has about a 50-year history associated with it. The statutes that are under amendment are actually not the first statutes that we wrote on the right to farm law. We wrote another set of statutes that deals with basically, that coming to the nuisance problem. Right. That's really what precipitated most of the work in this area. Somebody moving to an area that was agricultural, not really knowing what they're getting into and then suing to try to shut down an agricultural operation. It was predicated by an individual case, which much of this legislation is, where somebody got out of sorts with a feeder that lived next to them in, I think it was Custer County, but I could be wrong on that. In any event, that dispute wound up in the Legislature. We reacted with a set of statutes and then that statute was basically displaced by another set of statutes, which are the ones that are under amendment. I was here in 2019, testifying at length and working at length with folks on the floor, dealing with changes to the statutory text, the different issues that come up whenever we try to deploy this sort of thing and basically, generally educating the public about what it is that nuisance action does, what it is it doesn't do and how it sort of dovetails with land use regulation and serves an important role in the land use realm. So that's kind of what I, what I know. I can talk a little bit about what I've heard. I think you've had sort of great testimony, sort of explaining basically every perspective that you

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could have on this. There was a baby. There was a preacher. There were rural residents. I mean, you've had a little bit of everything. I'd be happy to, to shed any light on questions that you have as a result. I do think that there's, there's two things that I didn't see any testimony on today that I think might be important. One piece of the legislation shields operations from nuisance liability when they change their use, so that change in use provision that's in, in the legislation. That one is actually really important because a change in, in, in use, a change in type of agricultural operation could be from cropland or pasture land to a very large feeder or a chicken barn or something along those lines. And that change in use, under the text of this legislation, can't be used as a reason for establishing nuisance liability. And I don't know what that means. I think it may mean that you just really can't complain if you're living in a rural area and somebody comes in and puts 10,000 head of, of, of fat hogs next to you with a, with a lagoon and all of that. So if that's what it means, if it means those people, even if they live within a half a mile, even if they can establish a material violation of a zoning law, if it means they still can't sue, then I think that piece of the legislation probably goes a little bit too far. The other thing that I'd like to mention is all of the regulatory work, all of the land use work that we do in trying to figure out where these things should be on a rural landscape is all done sort of ex-ante. Right. In many-- in almost all instances, we think that this is going to work here. We think that it isn't going to harm the neighbors given the conditions that are applied to it. Nuisance law deals with the ex-post problem, which is what if you're wrong? Right. What if you don't think-- what, what, what if it does have an adverse effect on the neighbors, so much so that they can't live in their home anymore? What do you do then? They're in compliance with all the regulations that you thought we're going to protect them, but they didn't. And so the nuisance action fills that gap. Right. It deals with that ex-post problem. Taking it away makes things, makes things difficult. So with that, my red light's on. I'm happy to answer any questions you may have. I know I'm probably the last one, so.

HALLORAN: Happy Valentine's Day.

ANTHONY SCHUTZ: Thank you.

HALLORAN: Thanks for your testimony. Any questions from the committee?

IBACH: I have one.

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HALLORAN: I'm sorry. Senator Ibach.

IBACH: Thank you. Thank you, Mr. Chairman. I think you're the expert I've been waiting for.

ANTHONY SCHUTZ: So that was my-- one of my former students who was here before.

IBACH: Oh, very good. Can you just speak to the zoning piece--

ANTHONY SCHUTZ: Sure.

IBACH: --how the zoning laws established in each county, setbacks, that type of thing?

ANTHONY SCHUTZ: Sure.

IBACH: Can you just give us your short dissertation on how zoning laws--

ANTHONY SCHUTZ: Sure.

IBACH: --would apply here?

ANTHONY SCHUTZ: So we have a statute that allows counties to zone agricultural land and that is unique to Nebraska. A lot of states that have very strong right to farm policies don't have the ability to zone agricultural land. Iowa, for example, is like that. In Nebraska, we can zone agricultural land and those zoning statutes were written under that enabling act in the-- really, in the early 1990s and mid-1990s, as the hog industry was moving toward consolidation and a more industrialized model. There were a lot of folks that were really upset about that. Right. On, on my folks' farm, which is in Gosper County, which is in your district. Folks reacted with, with a lot of zoning. Right. And so, we have a lot of zoning statute-- or zoning ordinances at the county level that were written in that era. I have a database that actually includes all of the county zoning statutes that we could come up with. And we have a GIS map that sort of gives people access to those sorts of things. Many of those statutes haven't been updated. Many counties don't have the capacity to maintain a robust, comprehensive plan and amend their statutes and monitor them and enforce them and all of that. So there is county zoning. The county zoning in many places in the state is getting outdated. We have more unzoned counties now than we have had, I think, in the past. There's not very many of them, though, just a handful. And so there is, there

is zoning on the ground. There are ordinances that are in place. The extent to which they're robust and very protective of neighbors, though, is kind of a difficult question. Right. In some instances, they're pretty good. In other instances, they're pretty wide open. Lancaster County, for example, was very wide open until Lincoln Premium Poultry placed two barns in southeast and southwestern Lancaster County. And you heard testimony on that. The result was for them to take a look at their zoning, actually tighten it up a little bit, so that they could do more oversight. Those barns were, were actually-- there conditional use permit or special use permit was issued under the old zoning ordinance, ordinance that didn't have much of a check in it. So, you know, the, the, the remove or I'm sorry, the infiltration or construction, I guess, of these sorts of facilities actually can drive some improvement in zoning. But the way it stands now, I wouldn't say zoning is well-suited to avoiding all of the problems that can arise on a rural landscape. And in fact, you know, even in Lincoln, for example, where we, we have really strong zoning, we still see some nuisance actions among neighbors. Right. Because you can't just-- you just can't anticipate everything when you're writing a zoning code. It's also the case that there is law on the, on the-- from the Nebraska Supreme Court that says you can't zone with only the interests of neighbors in mind. Right. So there is a-- there has to be a public sort of purpose or point to your zoning and your administration of it, which can cause some cracks, right, some instances in which your use of a special use permit doesn't adequately protect you, protect the land uses among neighbors. And so nuisance law acts as a, as a, as a backstop, right, as a gap filler in those instances in which it's necessary. So that's, kind of, zoning in a nutshell. We've got a lot of it in the state, but some of it's not very good. Some of it is getting really old and there's, there's definitely work to be done. The, you know, the, the absence of nuisance actions places more pressure on that county zoning, county zoning scheme. And so, one thing to ask is whether it's up to snuff, right, whether it can handle it and then, too, whether it's got the capacity to continue to do that down the road. And our experience has been, there was a lot of energy to get county zoning and then the capacity waned. So that's--

IBACH: Thank you.

ANTHONY SCHUTZ: --that's a long answer to it.

HALLORAN: Nope. That was a very neutral-- so far you've been very neutral and I appreciate that. It's kind of a textbook neutral testimony. Any further questions from the committee?

ANTHONY SCHUTZ: I, I would like to offer just, just one thought on the pollution, if I, if I could. So there's been some talk about nitrate pollution and the extent to which a nuisance action is sort of related to that. The nuisance action has both a private dynamic which is between neighbors, but also there's the public nuisance, sort of, claim that's out there. The public nuisance claim has been used in environmental harm cases to, to try to force a duty on folks that historically-- or I'm, I'm sorry, try to force some liability on folks that don't have many very strong restraints on them. So it does have like a slice of environmentalism-- use: to public nuisance action. Whether it could be used for nitrate contamination is a, is a difficult question. The problem with nitrate contamination is it's a-- it's very often a legacy problem. The, the, the, the land applications that caused the contamination that, at least potentially, harms children. That land use application may have been 30 or 40 years ago. Then it infiltrates the vadose zone, makes its way to the aquifer and then ultimately, it's consumed. Nuisance wasn't built for that kind of a long-term problem. Right. Because it's about harms that are existing between individuals at a particular point in time. So nuisance actions aren't really a great way of remedying, remedying nitrate contamination in many parts of, of this state. So I, I don't know that taking away the, the nuisance action is necessarily going to mean we can't find some way of remedying nitrate contamination, but it could be helpful. The nuisance litigation could be helpful in places where you've got a more direct cause and effect relationship between sort of present land applications and existing contamination and harm, but it's a difficult claim to make. Very difficult.

RIEPE: Thank you.

HALLORAN: Well, we got Cliff Notes version here and a short while of a semester course. It was pretty good. Thank you for your testimony.

ANTHONY SCHUTZ: I, I, I do have an article on the 2019 legislation and the, sort of, story of it in the role of nuisance litigation-- nuisance lawsuits in relation to land use. I didn't bring a copy of it and I apologize. If you Google "Schutz, nuisance liability", it'll come up. It's with the Nebraska Law Review and it may be helpful.

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HALLORAN: OK. Thank you very much. Appreciate it. Any additional neutral? OK. With that, I will call this hearing for LB66-- excuse me. Senator Ballard. Premature. I have online comments, proponents, two, opponents, 24, neutral, zero, for LB622 [SIC - LB662].

BALLARD: Thank you, committee. Thank you for spending your Valentine's Day evening with me. I know it's been a long, it's been a long week for many of you on this committee already, so I appreciate it. So I just want to make three points. If I last longer than 90 seconds, Chairman, you can, you can take me out. So I think Senator Raybould hit the nail on the head. This is just a preventative measure. We have seen these lawsuits in North Carolina, Iowa, Indiana, Illinois, Kansas, Oregon, and even Hawaii. These, these are on the horizon. And Nebraska just needs to tailor the right to farm to prevent these frivolous lawsuits. And as we all know on this committee, Ag is our number one economic driver and I think we need to protect it. And number two, the vast majority-- I, I agree with the majority of the concerns of the opponents, but the vast majority of their concerns revolve around local ordinances, such as setbacks, permitting and zoning. And as I mentioned in my opening of LB662, I have not taken those at all. And second point, I think it's also important to note that these are not corporate farms we're talking about. These are local farms that are owned and operated by small, small farm-- farmers, just like the ones in my district. And then finally, I am willing to work with the stakeholders on tidying some of these languages, such as setbacks and, and the radius that can file complaints. With that, I'd be happy to take any questions, but I know that many of you have many things to do with your evening. So, thank you.

HALLORAN: OK. Thank you. Is there any questions? Closing questions? Senator Hansen.

HANSEN: I didn't see it in the, in the letters in opposition. Did NACO come out opposed to this? The Nebraska Association of County Officials?

BALLARD: I, I don't believe so.

HANSEN: OK.

HALLORAN: OK. Any additional questions? Seeing none, thank you so much.

BALLARD: Thank you.

HALLORAN: Thank you, everybody. That draws a conclusion to LB662. If we could clear the room, I'd like to have an Exec meeting with the committee.